IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

VOCALIFE LLC,	)(	
PLAINTIFF,	)(	CIVIL ACTION NO.
	)(	2:19-CV-123-JRG
VS.	)(	MARSHALL, TEXAS
	)(	
AMAZON.COM, INC. and	)(	
AMAZON.COM LLC,	)(	OCTOBER 8, 2020
DEFENDANTS.	)(	8:29 A.M.

TRANSCRIPT OF JURY TRIAL

MORNING SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

FOR THE PLAINTIFF:

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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

08:29:35 P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Counsel, before I bring the jury in, tell me who is going to present closing arguments for each side, how you want your time accounted for, and what, if any, warnings do you want on your time.

Let me hear from Plaintiff first.

MR. FABRICANT: Good morning, Your Honor.

THE COURT: Good morning.

MR. FABRICANT: For our closing argument, Your Honor, Jennifer Truelove will begin the closing argument, and I will follow Jennifer Truelove. We want to split our time 20 minutes for the initial closing and 20 minutes for the rebuttal closing.

THE COURT: And how do you and Ms. Truelove hope to divide the first 20 minutes?

MR. FABRICANT: I think the best estimate is approximately 10 minutes or so for Ms. Truelove of the first 20 minutes, Your Honor.

THE COURT: Does Ms. Truelove want a warning at any point, or are you going to take what's left of the first 20 whenever she stops?

MS. TRUELOVE: I think that's what will happen,

Your Honor. I don't need a warning from the Court.

THE COURT: Okay.

MR. FABRICANT: Your Honor, if I could have a warning at three minutes of the first 20?

THE COURT: When 17 have been used?

MR. FABRICANT: Yes.

THE COURT: I will do that. And then on the second closing you'll do the entirety of it?

MR. FABRICANT: I will, Your Honor. If I can have a warning at five minutes and two minutes.

THE COURT: All right. Mr. Fabricant.

MR. FABRICANT: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Hadden, what's the Defendants' plan in this regard?

MR. HADDEN: Yes, Your Honor. I'll be splitting with Mr. Dacus. I'll do approximately the first 25 to 30 minutes, if I could get a warning with 15 minutes left. 15 minutes before the end, Your Honor.

THE COURT: All right. 15 minutes left. That means, out of 40 minutes total, when 25 have been used?

MR. HADDEN: Yes, Your Honor. Thank you.

THE COURT: And then whenever you stop, Mr. Dacus will finish with whatever you leave him?

MR. HADDEN: Correct, Your Honor.

08:33:43 THE COURT: Mr. Dacus, regardless of what amount
08:33:45 of time that might be, what kind of warning, if any, do you
08:33:50 want?
08:33:51 MR. DACUS: If you would just tell me when I have
08:33:54 two minutes, please, Your Honor, I'd appreciate it.
08:33:58 THE COURT: Two minutes remaining.
08:33:58 MR. DACUS: Thank you, Your Honor.
08:33:59 MR. HADDEN: Thank you, Your Honor.
08:34:00 THE COURT: Thank you, counsel.
08:34:00 Ladies and gentlemen, before I bring in the jury,
08:34:06 we have quite a few people in the courtroom. Many of you
08:34:10 are associated with one side or the other of the case and
08:34:12 have invested time and work and resources in the trial
08:34:16 process.
08:34:21 I want to say to everybody present that the Court
08:34:25 considers its final instructions to the jury and counsels'
08:34:27 closing arguments to be the most serious part of a very
08:34:30 serious process.
08:34:31 Consequently, I don't want any conduct from anyone
08:34:35 that might disrupt or interrupt either my instructions to
08:34:39 the jury or counsel's closing arguments.
08:34:43 I don't want papers being shuffled. I don't want
08:34:46 people leaning over and whispering to each other. To the
08:34:52 extent it's possible, any getting up and leaving and coming
08:34:56 back in through the doors of the courtroom should be

avoided.

Please do everything you can possibly do to be as respectful as possible and conduct yourselves in a way that will avoid any interruptions or disruptions in the process.

As I say, I don't want anything that would take away from the jury's ability to focus intently on my instructions and counsel's closing arguments.

All right. Is there anything from either Plaintiff or Defendant before we bring in the jury?

MS. TRUELOVE: One thing, Your Honor. We intend to use a couple of boards during closing arguments. And we've kind of previewed with defense counsel where we would like to put easels, but I certainly want to run that by the Court and make sure you don't disapprove with what our intention is.

We'd like to use two easels total; one there in the well where we've been using them throughout the trial, and we thought we would put other -- one other back here, and just wanted to confirm with the Court that that would be okay.

THE COURT: And you intend to have boards or demonstratives up on both easels at the same time?

MS. TRUELOVE: That's correct, Your Honor, and interchanging some as -- as Mr. Fabricant goes throughout his closing argument.

08:36:07 THE COURT: Okay. And will members of the trial
08:36:15 team put up and take down the boards, or will the arguing
08:36:19 attorney be walking across the courtroom with a board in
08:36:22 hand trying to put it on the easel?
08:36:24 MS. TRUELOVE: We've got Mr. Lambrianakos and
08:36:26 Mr. Rubino handling the boards, trying to do that as least
08:36:30 disruptive as possible.
08:36:31 THE COURT: Will this occur in the Plaintiff's
08:36:34 first or second or in both closings?
08:36:37 MS. TRUELOVE: I think both, Your Honor, yes.
08:36:38 THE COURT: All right. And how soon into
08:36:42 Plaintiff's first closing argument do you expect to be
08:36:43 using one or both easels?
08:36:45 MS. TRUELOVE: I don't intend to use them during
08:36:47 my remarks at all. So they'll be used when Mr. Fabricant
08:36:51 starts going through the evidence.
08:36:53 MR. FABRICANT: Your Honor, we have a total of
08:36:54 five boards. Two would be used in the first 20 minutes.
08:36:58 And then in the final 20 minutes, we have two that would
08:37:02 come up. And then at the very, very end, one last board.
08:37:05 THE COURT: All right. And this has been
08:37:08 previewed with Mr. Dacus and Defendants? You all -- you
08:37:12 have an idea, Mr. Dacus, of what they're proposing to do?
08:37:16 MR. DACUS: I have an idea of where they're
08:37:19 proposing to put the easels. I have not seen the boards,

but I have an idea of where they intend to put the easels. And we have no objection to where they intend to place them, Your Honor. I would ask that they take the boards down once they conclude.

THE COURT: That is my typical practice for both sides.

Often I will wait to see if opposing counsel is going to use the other side's demonstrative as part of their cross-examination, but we won't have that in closing.

So whenever you conclude with your first or your final closing arguments, Plaintiff, you need to make sure that the boards are taken down.

MR. FABRICANT: Yes, Your Honor.

THE COURT: And I would suggest you go ahead and set up the second easel, put it where you want it so that we don't have that disruption going on while the jury is in the courtroom.

Let's go ahead and do that, and that way I can actually see where you intend to put these aids.

If it's the least little bit mechanical, it's better to get it done before the jury comes in.

And, also, while that's being done, counsel, let me suggest to you that your IT people keep everything hooked up and in place after the jury retires to deliberate. We'll have a break, and then I'll begin the

bench portion of the trial.

And I have had occurrences where it was necessary to bring the jury back into the courtroom to show them something, and, of course, the IT people had shut everything down and moved it out of the courtroom. And then we had to reconnect it and delay the process.

And so until you and I talk about it, keep your IT stuff where it is, okay?

MR. RUBINO: Your Honor, if we may take the boards out of the crinkly paper?

THE COURT: Yes.

MR. DACUS: Your Honor, may I ask a question?

THE COURT: Yes, sir.

MR. DACUS: I'm just concerned the way this is faced that I won't be able to see it. And Mr. Hadden, once they place the board, can we position ourselves so that we can see it?

THE COURT: I think you're entitled to see what they're going to use, Defendants. I just hope we can do it in a way that we don't have a circus going on in here with people walking all around the room.

MR. DACUS: Understood, Your Honor.

THE COURT: Probably the best approach, Mr. Dacus, is this vacant chair between Mr. Hilmes and Mr. Re, if you could pull that back a little bit. Whoever is going to be

doing closing, from that posture, you ought to be able to see both boards.

MR. DACUS: Thank you, Your Honor.

THE COURT: But, certainly, I want to accommodate each side to see what the other one uses.

MR. DACUS: Thank you very much.

THE COURT: Yes, I'm very glad we got that done in advance.

Just so I'll be sure and know, Mr. Dacus, will Defendant be using any boards or easels or anything like that during closing?

MR. HADDEN: No, Your Honor.

MR. DACUS: No, Your Honor.

THE COURT: Okay. All right. Is there anything else from either Plaintiff or Defendant before I bring in the jury?

MS. TRUELOVE: Nothing from Plaintiff, Your Honor.

MR. DACUS: Nothing from Amazon, Your Honor.

THE COURT: All right. Mr. Mixon, if you'd bring in the jury, please.

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Welcome back, ladies and gentlemen. Please be seated.

Ladies and gentlemen of the jury, you have now

heard the evidence in this case, and I'll now instruct you on the law that you must apply.

Before I go any further, let me mention that each of you are going to have your own printed copy of these instructions that I'm about to give you orally. If you'd like to take notes, you're welcome to. But because you'll each have your own written copy, you may choose merely to listen and not take notes. I leave that up to you.

It's your duty to follow the law as I give it to you. On the other hand, ladies and gentlemen, and as I've said previously, you, the jury, are the sole judges of the facts in this case.

Do not consider any statement that I have made over the course of the trial or might make in these instructions as an indication to you that I have any opinion about the facts in this case.

You're about to hear closing arguments for the attorneys for the parties. Statements and arguments of the attorneys, I remind you, are not evidence, and they are not instructions on the law. They're intended only to assist the jury in understanding the evidence and the parties' competing contentions.

A verdict form has been prepared for you, and you're to take this to the jury room with you and consider it as a part of your deliberations.

08:44:15 And when you've reached a unanimous decision as to
08:44:19 the verdict, you're to have your foreperson fill in the
08:44:23 blanks reflecting your unanimous answers to those
08:44:26 questions, sign it, date it, and then advise the Court
08:44:30 Security Officer that you have reached a verdict.
08:44:31 Answer each question in the verdict form from the
08:44:37 facts as you find them to be. Do not decide who you think
08:44:42 should win the case, ladies and gentlemen, and then answer
08:44:44 the questions to achieve or reach that result.
08:44:49 Again, your answers to the questions and your
08:44:52 verdict in this case must be unanimous.
08:44:54 You are to consider these instructions that I'm
08:44:59 giving you as a whole, and you should not read or consider
08:45:02 any single instruction in isolation but consider them
08:45:07 collectively.
08:45:07 In determining whether any fact has been proven in
08:45:11 this case, you may, unless otherwise instructed, consider
08:45:15 the testimony of all the witnesses, regardless of who
08:45:19 called them, and you may consider the effect of all the
08:45:22 exhibits received and admitted into evidence and used over
08:45:26 the course of the trial, regardless of who may have
08:45:30 produced or presented them.
08:45:31 You the -- you, the jury, are the sole judges of
08:45:37 the credibility and believability of each and every witness
08:45:42 and the weight and effect to be given to all the evidence

in this case.

Now, during the course of the trial, you may have been shown documents with some portions redacted. In those situations, if that occurred, you should not speculate about what may have been redacted or why. Those redactions were approved by the Court prior to when the trial began.

And as I've told you previously, ladies and gentlemen, the attorneys in this case are acting as advocates for the competing parties and the parties' competing claims. And they have a duty to raise objections when they believe evidence is offered that should not be admitted under the rules of the Court.

In those cases, when the Court has sustained an objection to a question addressed to a witness, you are to disregard the question entirely, and you may not draw any inferences from its wording or speculate about what the witness would have said if the Court had permitted them to answer the question.

However, on the other hand, if the Court overruled an objection, then you're to treat the question and the answer just as if no objection had been made, like any other question and answer.

Now, at various times during the trial, it was necessary for the Court to talk to the lawyers outside of your presence and hearing when you were in the jury room.

08:47:14 This happens during trials because there are things that
08:47:17 sometimes arise that do not involve the jury.
08:47:22 You should not speculate, ladies and gentlemen,
08:47:24 about anything that was said between Court and counsel
08:47:27 outside of your hearing and outside of your presence.
08:47:31 The evidence that you are to consider consists of
08:47:35 the testimony of the witnesses, the documents and other
08:47:40 exhibits admitted into evidence, and any fair inferences or
08:47:45 reasonable conclusions you may draw from the facts and
08:47:48 circumstances that have been proven.
08:47:50 Now, there are two types of evidence that you may
08:47:56 consider to properly find the truth of the facts in this
08:48:02 case.
08:48:02 One is the direct evidence, such as the testimony
08:48:05 of an eyewitness. The other is indirect, or circumstantial
08:48:08 evidence. That is, proof of a chain of circumstances that
08:48:12 indicates the existence or the non-existence of certain
08:48:16 other facts.
08:48:16 As a general rule, you should know that the law
08:48:19 makes no distinction between direct or circumstantial
08:48:23 evidence, but simply requires that you, the jury, find the
08:48:27 facts based on the evidence presented, both direct and
08:48:31 circumstantial.
08:48:32 The parties may have stipulated to some facts in
08:48:37 this case, and when lawyers for both sides stipulate or

agree as to the existence of a fact, you must, unless otherwise instructed, accept that stipulation as evidence and regard the fact as proven.

Certain testimony in this case was presented to you during this trial through depositions. A deposition is the sworn, recorded answers to questions asked of a witness in advance of the trial.

If a witness cannot be present to personally testify from the court -- from the courtroom, then the witness's testimony may be presented under oath in the form of a deposition.

And as I told you earlier, before the trial began, the attorneys representing the parties in this case questioned these deposition witnesses under oath. At that time, the witness was sworn, a court reporter was present, questions were asked by counsel, and the answers of the witness were recorded.

Both sides have then had the opportunity to contribute portions of that sworn testimony from those depositions to be played to you during the course of this trial in open court.

Deposition testimony, ladies and gentlemen, is entitled to the same consideration by the jury as testimony given by a witness who appeared in person and testified from the witness stand.

Therefore, you should judge the credibility and the importance of deposition testimony to the best of your ability, just as if the witness had appeared in open court and testified from the witness stand.

Now, while you should consider only the evidence that's been presented in this case, you should also understand, ladies and gentlemen, that you are permitted to draw such reasonable inferences from the testimony and the exhibits as you feel are justified in the light of common experience.

In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and the evidence in this case.

However, you should not base your decisions on any evidence not presented by the parties in open court during the course of the trial.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You alone are to determine the questions of credibility or truthfulness of the witnesses.

In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor on the witness stand, any feelings or interest they may have in the case, any prejudice or bias about the case that the

witness may have, and you may consider the consistency or inconsistency of their testimony, considered in the light of the circumstances.

Has the witness been contradicted by other evidence? Has he or she made statements at other times and places contrary to what they said on the witness stand? You must give the testimony of each witness the amount of credibility that you think it deserves.

You must also keep in mind, ladies and gentlemen, that a simple mistake does not mean that a witness is not telling the truth. You must consider whether any misstatement was an intentional falsehood or a simple lapse in memory and what significance should be attached to that testimony.

Now, unless I instruct you otherwise, you may properly determine that the testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all of the evidence you believe that single witness.

When knowledge of a technical subject may be helpful to you, the jury, a person who has special training or experience in that technical field -- we call them an expert witness -- is permitted to state to you his or her opinions on those technical matters.

However, ladies and gentlemen, you are not required to accept those opinions. And as with any other witness, it's solely up to you to decide who you believe and who you don't believe and whether or not you want to rely on their testimony.

Now, certain exhibits have been shown to you during the course of the trial that were illustrations. We call these types of illustration -- we call these types of exhibits demonstrative exhibits. And they're often referred to, by shorthand, simply as demonstratives.

Demonstrative exhibits are a party's description, drawing, picture, or model to describe something involved in the trial.

If your memory of the evidence differs from the demonstratives, then you should rely on your memory.

Demonstratives, which are sometimes called jury aids, demonstratives, ladies and gentlemen, are not evidence themselves, but the witness's testimony during which the demonstrative was used is evidence.

Now, while demonstratives may be helpful in determining the issues, the demonstratives of both parties are not evidence, and they are not proof of any facts. These demonstratives, ladies and gentlemen, will not be available to you to consider during your deliberations.

Now, in any legal action, facts must be proven by

a required amount of evidence known as the burden of proof. The burden of proof in this case is on the Plaintiff for some issues, and it's on the Defendants for other issues.

There are two burdens proof that you may apply in this case. One is the preponderance of the evidence, and the other is clear and convincing evidence.

The Plaintiff in this case, Vocalife, who you've -- excuse me, who you've heard referred to simply as Vocalife, or the Plaintiff, over the course of the trial, has the burden of proving patent infringement by a preponderance of the evidence.

Vocalife also has the burden of proving willful patent infringement by a preponderance of the evidence.

And Vocalife has the burden of proving damages for any patent infringement by a preponderance of the evidence.

Let me remind you, a preponderance of the evidence means evidence that persuades you, the jury, that a claim is more probably true than not true. Sometimes this is talked about as being the greater weight and degree of credible testimony.

Now, the Defendants in this case, Amazon.com, Inc., and Amazon.com, LLC, who you've heard referred to collectively throughout the case as just Amazon, or as Defendants, they have the burden of proof of proving patent invalidity by clear and convincing evidence.

08:56:03 Clear and convincing evidence, ladies and
08:56:04 gentlemen, means evidence that produces in your mind an
08:56:08 abiding conviction that the truth of the parties' factual
08:56:13 contentions are highly probable.
08:56:16 And, although proof to an absolute certainty is
08:56:19 not required, the clear and convincing evidence standard
08:56:22 requires a greater degree of persuasion than is necessary
08:56:28 for the preponderance of the evidence standard.
08:56:30 Now, as I've told you previously, neither of these
08:56:34 two burdens of proof should be confused with the burden of
08:56:38 proof known as beyond a reasonable doubt. That burden of
08:56:43 proof is the burden of proof applied in criminal cases, not
08:56:46 in a civil case like this.
08:56:49 You should not confuse clear and convincing
08:56:51 evidence with beyond a reasonable doubt. It's not as high
08:56:57 as beyond a reasonable doubt, but it is higher than a
08:57:01 preponderance of the evidence.
08:57:02 Now, in determining whether any fact has been
08:57:06 proven by a preponderance of the evidence or by clear and
08:57:09 convincing evidence, you may, unless otherwise instructed,
08:57:14 consider the stipulations of the parties, the testimony of
08:57:17 all the witnesses, regardless of who called them, and all
08:57:20 the exhibits received and admitted into evidence over the
08:57:25 course of the trial, regardless of who produced them or
08:57:27 presented them.

08:57:28 Now, as -- as I did at the beginning of the case,
08:57:32 I'll give you a summary of each side's contentions, and
08:57:35 I'll provide you with detailed instructions on what each
08:57:39 side must prove to win on each of its contentions.
08:57:43 As I previously told you, this is an action for
08:57:47 patent infringement. This case concerns one United States
08:57:52 patent, which is United States Patent No. RE47,049, which
08:57:57 you've heard referred to repeatedly throughout the trial as
08:58:00 the '049 patent. You've also heard that referred to as the
08:58:07 asserted patent. Sometimes it's called the patent-in-suit.
08:58:09 Now, I'll refer to this as the patent-in-suit or
08:58:16 the asserted patent or as the '049 patent throughout the
08:58:17 remainder of these instructions.
08:58:21 The Plaintiff, Vocalife, has alleged that certain
08:58:23 of the Defendants', Amazon's, products indirectly infringe
08:58:28 claims of the asserted patent. Vocalife seeks money
08:58:33 damages from Amazon for inducing infringement of certain
08:58:37 claims of the '049 patent by selling the Echo products and
08:58:41 instructing customers to use them in a manner that Vocalife
08:58:46 argues infringes the patent's asserted method claims. And,
08:58:53 as I said, Vocalife contends that Amazon has induced its
08:58:57 customers to infringe these claims.
08:58:58 The claims-in-suit, the asserted claims, are
08:59:02 Claims 1 and 8 of the '049 patent. And these claims, as
08:59:10 I've just mentioned, are sometimes called the asserted

claims.

Now, the Plaintiff, Vocalife, alleges that the use of the following products infringe the asserted claims.

They are: Amazon Echo 1st Generation, Amazon Echo 2nd Generation, Amazon Echo 3rd Generation, Amazon Echo Dot 1st Generation, Amazon Echo Dot 2nd Generation, Amazon Echo Dot 3rd Generation, Amazon Echo Dot Kids Edition 1st Generation, Amazon Echo Dot Kids Edition 2nd Generation, Amazon Echo Look, Amazon Echo Show 1st Generation, Amazon Echo Show 2nd Generation, Amazon Echo Spot, Amazon -- Amazon Echo Plus 1st Generation, Amazon Echo Plus 2nd Generation, and Amazon Echo Studio.

These products are sometimes referred to, for shorthand and collectively, as the accused products.

The Plaintiff, Vocalife, contends that the use of the accused product infringes Claims 1 and 8 of the '049 patent.

And Vocalife also alleges that Amazon's infringement is and has been willful.

Vocalife seeks money damages in the form of a reasonable royalty for the alleged infringement of the Defendants.

The Defendants, Amazon, denies that the use of the accused products infringe the asserted claims of the asserted patent.

09:00:58 Amazon further denies that it willfully infringed
09:01:02 any claim of the asserted patent.
09:01:06 Amazon also contends that each of the asserted
09:01:09 claims of the '049 patent are invalid, for separate and
09:01:14 distinct reasons.
09:01:15 Invalidity, ladies and gentlemen, is a defense to
09:01:19 infringement. And, remember, invalidity and infringement
09:01:23 are separate and distinct issues.
09:01:27 Your job is to decide whether any of the asserted
09:01:31 claims of the '049 patent have been infringed and when --
09:01:35 and when -- excuse me, and whether any of the asserted
09:01:41 claims of the '049 patent are invalid.
09:01:44 Also, Amazon denies that it owes Vocalife any
09:01:49 damages in this case.
09:01:50 Now, it's your job, members of the jury, to decide
09:01:54 whether Vocalife has proven that Amazon has infringed any
09:01:58 of the asserted claims of the asserted patent and whether
09:02:02 that infringement was will -- willful.
09:02:05 You must also decide whether Vocalife has proven
09:02:08 that any of the asserted claims -- excuse me, you must also
09:02:16 decide whether Amazon has proven that any of the asserted
09:02:19 claims of the '049 patent are invalid.
09:02:22 Now, if you decide that any of the asserted claims
09:02:26 have been infringed and are not invalid, then you will need
09:02:32 to decide what amount of money damages, if any, are to be

awarded to Vocalife to compensate it for that infringement.

Now, before you can decide many of the issues in this case, you need to understand the role of the patent claims.

The claims of a patent are those numbered sentences at the end of the patent. Each of you have had a complete copy of the '049 patent in your notebooks throughout this trial.

The patent claims at issue, as I've said, are Claims 1 and 8, and they begin on Column 21 at Line 27 of the patent.

The claims define the patent owner's rights under the law. The claims are important because it is the words of the claims themselves that define what the patent covers.

The figures in the text and the remainder of the text and the rest of the patent are intended to provide a description or examples of the invention, and they provide a context for the claims.

But, ladies and gentlemen, it is the claims themselves that define the breadth of the patent's coverage.

Each claim is effectively treated as if it were its own separate patent. And each claim may cover more or may cover less than any other claim. Therefore, what a

patent covers collectively or as a whole depends on what each of its claims covers.

You first need to understand what each claim covers in order to decide whether or not there is infringement of that claim and -- and to decide whether or not the claim is invalid.

The first step is to understand the meaning of the words used in the patent claim. Now, as the law says, it is my role to define the terms of the claims, but it is your role to apply my definitions to the issues that you're asked to decide in this case.

We call those definitions that the Court provides to the jury claim constructions. These claim terms and my definitions, my claim constructions, are included in a chart in your juror notebooks. And you've had them since the beginning of the trial.

You must accept my definitions of those words and phrases in the claims as being correct. It's your job to take these definitions and apply them to the issues that you are deciding, including both the issues of infringement and invalidity.

For any claim language that I have not construed, you're to use the plain and ordinary meaning of those terms in the context of the patent-in-suit as understood by a person of ordinary skill in the art, which is to say in the

field of the technology of the patent as of September the 24th, 2010.

I'll now explain to you what a claim -- how a claim defines what it covers.

A claim sets forth in words a set of requirements. Each claim sets forth its requirements in a single sentence. If the use of a product satisfies each of these requirements in that sentence, then it is covered by and infringes that claim.

There can be several claims in a patent, as you know, and a claim -- one claim may be narrower or broader than another claim by setting forth more or fewer requirements.

The coverage of a patent is determined and assessed on a claim-by-claim basis.

Now, in patent law, the requirements of a claim are often referred to as the claim elements. They're sometimes called the claim limitations.

When the use of a product meets all the requirements of a claim, the claim is said to cover that use, and that use is said to fall within the scope of that claim.

In other words, a claim covers the use of a product where each of the claim elements or limitations is performed.

09:06:45 If a product, as used, is missing even one
09:06:50 limitation or one element of a claim, that use is not
09:06:53 covered by that claim. And if the use is not covered by
09:06:56 the claim, that use does not infringe that claim.
09:07:00 Now, this case, ladies and gentlemen, involves two
09:07:04 types of patent claims, independent claims and dependent
09:07:07 claims. In this case, Claim 1 of the '049 patent is an
09:07:13 independent claim, and Claim 8 of the '049 patent is a
09:07:18 dependent claim.
09:07:19 An independent claim does not refer to any other
09:07:23 claim in the patent. An independent claim sets forth all
09:07:27 the requirements that must be met in order to be covered by
09:07:30 the claim. It's not necessary to look to any other claim
09:07:35 in a patent to determine what an independent claim covers.
09:07:41 However, on the other hand, a dependent claim does
09:07:44 not by itself recite all the requirements of the claim but
09:07:49 refers to another claim or claims for some of its
09:07:52 requirements. In this way, the dependent claim depends
09:07:56 from another claim.
09:07:59 The law considers a dependent claim to incorporate
09:08:04 all the requirements of the claim or claims to which it
09:08:07 refers, or as we sometimes say, from which it depends, as
09:08:13 well as the additional claims and requirements set forth in
09:08:20 the -- in the dependent claim itself.
09:08:21 To determine what a dependent covers -- a

dependent claim covers, ladies and gentlemen, it's necessary to look at both the dependent claim and any other claim to which it refers or from which it depends.

A product that meets all the requirements of both the dependent claim and the claim from which it refers is covered by that dependent claim.

In order to find infringement of a dependent claim, you must consider all the limitations of both the dependent claim and the other claim from which it depends.

If you decide that the claim from which the dependent claim depends has not been infringed, then the dependent claim cannot have been infringed.

If you decide that a claim from which the dependent claim depends has been infringed, you must then separately determine whether the additional requirements of the dependent claim have also been met. If the additional requirements have been met, then the dependent claim has been infringed.

Certain claims of the asserted patent use the word "comprising." Comprising means including or containing.

When the word "comprising" is used, a product that includes all the limitations or elements of the claim, as well as additional elements, is covered by the claim.

For example, if you take a claim that covers the invention of a table, if the claim recites a table

09:10:00 comprising a tabletop, four legs, and nails that hold the
09:10:04 legs to the tabletop, the claim will cover any table that
09:10:07 contains these structures, even if that table also contains
09:10:12 other structures, such as leaves that would go in the
09:10:16 tabletop to expand it or wheels that would go on the ends
09:10:19 of the legs.

09:10:20 Now, that's a simple example using the word
09:10:24 "comprising" and what it means. But, remember, in other
09:10:28 words, it can have other features in addition to those that
09:10:31 are covered by the patent.

09:10:32 If the use of a product, ladies and gentlemen, is
09:10:36 missing even one element or limitation of a claim, it does
09:10:42 not meet all the requirements of that claim, and it is not
09:10:45 covered by that claim. And if the -- if the use of a
09:10:48 product is not covered by the claim, it does not infringe
09:10:52 the claim.

09:10:54 I'll now instruct you on infringement in a little
09:10:58 greater detail than I have before.

09:11:01 If a person makes, uses, sells, or offers for sale
09:11:05 within the United States or imports into the United States
09:11:10 what is covered by a patent claim without the patent
09:11:13 owner's permission, that person is said to infringe the
09:11:17 patent.

09:11:18 In this case, Vocalife alleges that Amazon,
09:11:22 together with Amazon's customers, infringe the asserted

09:11:27 claims of Vocalife's '049 patent by using the accused
09:11:31 products.
09:11:33 In reaching your decision on infringement, keep in
09:11:37 mind that only the claims of a patent can be infringed.
09:11:41 You must compare each of the asserted claims, as I have
09:11:46 defined them for you, to the accused products use -- as
09:11:49 used, and determine whether or not there is infringement.
09:11:54 You should not compare the accused products, as
09:11:57 used, with any specific example set out in the patent with
09:12:03 Vocalife's commercial product or with the prior art in
09:12:06 reaching your decision on infringement.
09:12:07 Remember, the only correct comparison is -- is
09:12:12 between the accused products, as used, and the language of
09:12:17 the claims themselves, applying all the definitions of the
09:12:21 claim language that the Court has given you.
09:12:27 You must reach your decision as to whether or not
09:12:30 each asserted claim is infringed based on my instructions
09:12:34 about the meaning and scope of the claims, the legal
09:12:37 requirements for infringement, and the evidence presented
09:12:38 to you over the course of the trial.
09:12:43 Infringement, ladies and gentlemen, is assessed or
09:12:45 determined on a claim-by-claim basis. Therefore, there may
09:12:49 be infringement of one claim but no infringement as to
09:12:52 another claim.
09:12:56 I'll now instruct you on how to decide whether or

09:12:58 not Vocalife has proven that Amazon has infringed any of
09:13:02 the asserted claims of the patent-in-suit.
09:13:06 The Plaintiff, Vocalife, alleges that the
09:13:09 Defendants, Amazon, has infringed indirectly -- has
09:13:14 indirectly infringed, I should say, by inducing its
09:13:18 customers to infringe the '049 patent.
09:13:23 To prove induced infringement, one of the facts,
09:13:26 among others, that Vocalife must prove by a preponderance
09:13:30 of the evidence is that Amazon's customers directly
09:13:33 infringe the asserted claims.
09:13:36 A patent can be directly infringed even if the
09:13:40 alleged direct infringer did not have knowledge of the
09:13:44 patent and without the direct infringer knowing that what
09:13:48 it was doing is infringement of the claim.
09:13:50 A patent may also be directly infringed even
09:13:55 though the accused direct infringer believes in good faith
09:13:59 that what it is doing is not infringement of the patent.
09:14:03 Infringement does not require proof that any party
09:14:07 copied its product or method from the asserted claims.
09:14:13 In order to prove direct infringement, the
09:14:15 Plaintiff, Vocalife, must prove by a preponderance of the
09:14:19 evidence that -- that Amazon's customers used the invention
09:14:23 defined in the asserted claims of the '049 patent in a way
09:14:29 that meets each of the elements of those claims. You must
09:14:34 compare the use of the accused products which -- with each

09:14:38 and every one of the requirements of a claim to determine
09:14:42 whether all the requirements of that claim are met.
09:14:46 A claim requirement is met if it is practiced by
09:14:49 Amazon's customers using the accused Amazon products, just
09:14:55 as it is described in the claim language, either as I've
09:14:59 explained it to you, or if I did not explain it to you, as
09:15:02 it would be understood -- understood by one of ordinary
09:15:06 skill in the art.
09:15:06 If the use of any accused product omits any
09:15:11 requirement recited in a claim, then such use does not
09:15:15 directly infringe that particular claim.
09:15:20 You must determine separately for each asserted
09:15:23 claim, ladies and gentlemen, whether Amazon has infringed
09:15:26 the '049 patent.
09:15:28 There is one exception to this rule. If you find
09:15:31 that an independent claim from which other claims depend is
09:15:36 not infringed, there cannot be infringement of any
09:15:42 dependent claim that refers directly to that independent
09:15:47 claim.
09:15:48 Therefore, if you find that Amazon does not induce
09:15:51 infringement of Claim 1, then Amazon cannot induce
09:15:56 infringement of Claim 8.
09:15:58 On the other hand, if you find that an independent
09:16:02 claim has been infringed, you must still decide separately
09:16:07 whether the use by Amazon's customers meets the additional

requirements of the claim which depends from that independent claim, that is, whether the claim has also been infringed.

The same use of Amazon's products may satisfy more than one element of a claim. The act of encouraging or inducing others to infringe a patent is called inducing infringement, which is a form of indirect infringement.

Vocalife alleges that Amazon is liable for indirect infringement by actively inducing Amazon's customers to directly infringe the asserted claims of the asserted patent.

You must determine whether there has been inducement on a claim-by-claim basis.

Amazon is liable for inducement of infringement if Vocalife proves by a preponderance of the evidence that:

(1) Acts are actually carried out by Amazon's customers making, using, or selling the accused products, and those acts directly infringe that claim;

(2) Amazon took action during the time the asserted patent was in force intending to cause the infringing acts by Amazon's customers; and

(3) Amazon, (a) was aware of the asserted patent and knew that the acts, if taken by its customers, would infringe the patent, or, (b), were willfully blind to the fact that by engaging in those acts, its customers would

commit infringement of that patent.

To prove willful blindness, Vocalife must prove by a preponderance of the evidence that:

(1) Amazon subjectively -- subjectively believed there was a high probability that Amazon's customers were directly infringing the asserted claims by engaging in acts induced by Amazon; and

(2) that Amazon took deliberate steps to avoid confirming that high probability.

It's not sufficient for Vocalife to show that Amazon knew of a substantial risk of infringement by its customers or that Amazon should have known of that risk.

Vocalife must prove by a preponderance of the evidence that Amazon knew of the substantial risk and took deliberate acts to avoid confirming that risk.

If you find that it is more likely than not that Amazon actively induced infringement of a valid claim of the '049 patent, then you must decide whether or not Amazon's infringement was willful.

To show that Amazon's infringement was willful, Vocalife, the Plaintiff, must prove by a preponderance of the evidence that Amazon knew of the '049 patent and intentionally infringed at least one asserted claim of that patent.

For example, you may consider whether Amazon's

behavior was malicious, wanton, deliberate, consciously wrongful, flagrant, or in bad faith.

However, you may not find that Amazon's infringement was willful, merely because you have found that Amazon knew about the patent without more.

In determining whether Vocalife has proven that Amazon's infringement was willful, you must consider all of the circumstances and assess Amazon's knowledge at the time the alleged wrongful conduct occurred.

I'll now instruct you on the rules that you must follow in deciding whether or not Amazon has proven that the asserted claims of the asserted patent are invalid.

Amazon must prove by clear and convincing evidence that each asserted claim is invalid.

The law presumes, ladies and gentlemen, in the absence of clear and convincing evidence to the contrary, that the United States Patent and Trademark Office acted correctly in issuing a United States patent.

However, that presumption of validity can be overcome if clear and convincing evidence is presented in court that proves the patent is invalid.

Therefore, you, the jury, must determine whether Amazon has proven Vocalife's claims are invalid.

Keep in mind that everyone has the right to use existing knowledge and principles. A patent cannot remove

09:20:55 from the public the ability to use what was known or
09:20:58 obvious before the invention was made or patent protection
09:21:02 was sought.
09:21:03 Amazon, the Defendant, contends that all the
09:21:09 asserted claims in this case are invalid for three separate
09:21:11 reasons. Those reasons are:
09:21:14 (1) the claimed inventions would have been obvious
09:21:17 to a person of ordinary skill in the field in view of the
09:21:22 prior art;
09:21:23 (2) the claimed inventions lack utility because
09:21:28 the claimed methods are inoperative; and
09:21:31 (3) the claimed inventions are not what the
09:21:34 inventors regard as their inventions.
09:21:37 I'll now instruct you on how to decide whether or
09:21:42 not Amazon has proven that the claims of the '049 patent
09:21:44 are invalid.
09:21:44 Prior art, ladies and gentlemen, refers to
09:21:49 information available to those of ordinary skill in a field
09:21:53 before the date of the claimed invention and may include
09:21:58 items that were publicly known or that have been used or
09:22:01 offered for sale or written references, such as
09:22:05 publications of patents -- publications or patents that
09:22:09 disclose the claimed invention or elements of the claimed
09:22:12 invention.
09:22:13 To be prior art, the item or reference must have

been made, known, used, published, or patented before the filing date of the provisional patent application of the '049 patent, which date is September the 24th, 2010.

In order for someone to be entitled to a patent, the claimed invention must not be obvious over the prior art. In other words, prior art is considered in determining whether the asserted claims of the '049 patent are obvious.

For purposes of this case, the date of invention is September the 24th, 2010.

As I've previously explained, to obtain a patent, you must first file an application with the United States Patent and Trademark Office. And you've heard that agency abbreviated throughout the trial and referred to simply as the PTO.

The process of obtaining a patent is called patent prosecution. The application is submitted to the PTO, and it includes within it what is called a specification.

The specification is required to contain a written description of the claimed invention telling what the invention is, how it works, how to make it, and how to use it.

You may have heard evidence of prior art that the Patent Office may or may not have evaluated. The fact that any particular reference was or was not considered by the

Patent Office does not change Amazon's burden of proof.

However, in making your decision whether Amazon has met its burden of proof by clear and convincing evidence as to a particular patent claim, you may take into account the fact that the prior art was not considered by the Patent Office.

Prior art differing from the prior art considered by the Patent Office may, but does not always, carry more weight than the prior art that was considered by the Patent Office.

Again, the ultimate responsibility for deciding whether the claims of the patent are valid is up to you, ladies and gentlemen -- ladies and gentlemen, as the members of this jury.

Like infringement, invalidity is determined on a claim-by-claim basis. In making your determination as to invalidity, you should consider each of the asserted claims separately.

If one claim of a patent is invalid, this does not mean that any other claim is necessarily invalid. Claims are construed the same way for determining infringement as for determining invalidity.

Now, Amazon contends that the asserted claims of the '049 patent are invalid as being obvious. Even though an invention may not have been identically disclosed or

described before it was made by an inventor, in order to be patentable, the invention also must not have been obvious to a person of ordinary skill in the field of the technology of the patent at the time the invention was made, or before -- before the filing date of the patent.

Amazon is required to establish that a patent claim is invalid by showing by clear and convincing evidence that the claimed invention would have been obvious to persons having ordinary skill in the art at the time the invention was made or the patent was filed in the field of the invention.

In determining whether a claimed invention is obvious, you must consider the level of ordinary skill in the field of the invention that someone would have had at the time the invention was made or the patent was filed, the scope and content of the prior art, any differences between the prior art and the claimed invention, and the ordinary knowledge of the person of ordinary skill at the time of the invention.

Keep in mind, ladies and gentlemen, that the existence of each and every element of the claimed invention in the prior art does not necessarily prove obviousness. Most, if not all, inventions rely on building blocks of prior art.

In considering whether a claimed invention is

obvious, you may, but are not required to, find obviousness if you find at the time of the claimed invention or the patent's filing date, there was a reason that would have prompted a person having ordinary skill in the field of the invention to combine the known elements in a way the claimed invention does, taking into account such factors as:

(1) Whether the claimed invention was merely the predictable result of using prior art elements according to their known function;

(2) whether the claimed invention provides an obvious solution to a known problem in the relevant field;

(3) whether the prior art teaches or suggests the desirability of combining elements in the claimed invention, such as where there is a motivation to combine;

(4) whether the prior art teaches away from combining elements in the claimed invention;

(5) whether it would have been obvious to try the combinations of elements in the claimed invention, such as where there is a design incentive or market pressure to solve a problem, and there are a finite number of identified predictable solutions, although obvious to try is not sufficient in unpredictable technologies; and

(6) whether the change resulted more from design incentives or market forces.

09:28:30 To find that prior art rendered the invention
09:28:33 obvious, you must find that it provided a reasonable
09:28:38 expectation of success.
09:28:39 In determining whether the claimed invention was
09:28:42 obvious, consider each claim separately. Do not use
09:28:45 hindsight, ladies and gentlemen.
09:28:49 In other words, you should not consider what a
09:28:51 person of ordinary skill in the art would know today or
09:28:57 what has been learned from the teaching of the asserted
09:29:00 patent.
09:29:00 In determining whether the claimed invention was
09:29:02 obvious, consider each claim separately, but understand
09:29:07 that if a dependent claim is obvious, then the claims from
09:29:11 which it depends are necessarily obvious, as well. Obvious
09:29:16 to try is not sufficient in unpredictable technologies.
09:29:23 Amazon must show that one of ordinary skill in the
09:29:26 art would actually recognize the benefit of combining prior
09:29:30 art references to achieve the claimed invention.
09:29:34 You must find that a person of ordinary skill
09:29:38 would have considered it reasonably likely that the
09:29:41 combination would work for its intended purpose.
09:29:45 However, the mere hope of a combination -- excuse
09:29:49 me, the mere hope that a combination might succeed is not
09:29:53 sufficient.
09:29:54 In deciding obviousness, you must avoid using

hindsight, as I've said; that is, you should not consider what is known today or what was learned from the teachings of the patent.

You should not use the patent as a roadmap for selecting and combining elements of prior art. You must put yourself -- self in the place of a person of ordinary skill in the art as of September the 24th, 2010.

Now, several times in these instructions I've referred to a person of ordinary skill in the field of the invention. It's up to you, ladies and gentlemen, to determine the level of ordinary skill in the field of the invention.

In deciding what the level of ordinary skill is, you should consider all the evidence introduced at trial, including:

(1) the levels of education and experience of the inventors and other persons working in the field;

(2) the types of problems encountered in the field;

(3) prior art solutions to those problems;

(4) the rapidity with which innovations are made; and

(5) the sophistication of the technology.

A person of ordinary skill in the art is a hypothetical person who is presumed to be aware of all the

relevant prior art at the time of the claimed invention.

Amazon contends that the asserted claims of the '049 patent are invalid because they are inoperative and, therefore, lack utility. Amazon bears the burden of establishing that the inventions lack utility by clear and convincing evidence.

A claimed invention lacks utility and is invalid if it contains a limitation that is impossible to meet or does not work. If the asserted claims of the '049 patent recite a way of accomplishing an unattainable result or recite a nonsensical method of operation, then the claims are invalid for lacking utility because the invention, as claimed, is inoperative.

Amazon also contends that the asserted claims of the '049 patent are invalid for failure to claim the subject matter that the inventors regard as their invention.

Amazon bears the burden of establishing by clear and convincing evidence that the patent is invalid under this requirement.

Our patent laws require patent claims to particularly point out and distinctively claim the subject matter which the inventor regards as the invention.

If the asserted claims of the '049 patent do not particularly point out and distinctly claim the subject

matter which the inventors regard as -- as their invention, then the asserted claims are invalid.

If you find that Vocalife has proven that Amazon has infringed any of the asserted claims and if you find that Amazon has failed to show that the asserted claims are invalid, you must then consider the proper amount of damages, if any, to award to Vocalife.

I'll now instruct you about the measure of damages. However, ladies and gentlemen, by instructing you on damages, I'm not suggesting which party should win this case on any issue.

If you find that Amazon has not infringed any of the asserted claims or that all of the asserted claims are invalid, then Vocalife is not entitled to any damages.

If you award damages, they must be adequate to compensate Vocalife for any infringement of the asserted claims you may find.

You must not award Vocalife more damages than are adequate to compensate for the infringement, nor should you include any additional amount for the purpose of punishing Amazon.

The patent laws specifically provide that damages for infringement may not be less than a reasonable royalty.

Now, Vocalife has the burden to establish the amount of its damages by a preponderance of the evidence.

09:34:34 In other words, you should award only those
09:34:36 damages that Vocalife establishes -- establishes that it,
09:34:40 more likely than not, suffered as a result of Amazon's
09:34:44 infringement of the asserted claims.
09:34:45 While Vocalife is not required to prove the amount
09:34:50 of its damages with mathematical precision, it must prove
09:34:54 them with reasonable certainty.
09:34:57 Vocalife is not entitled to damages that are
09:35:00 remote or speculative. If damages are awarded, the damage
09:35:04 period is to begin as of April the 16th, 2019.
09:35:10 Now, there are different types of damages that
09:35:14 Vocalife may be entitled to recover. In this case,
09:35:18 Vocalife seeks damages in the form of a reasonable royalty.
09:35:22 A reasonable royalty, ladies and gentlemen of the
09:35:28 jury, is the amount of royalty payment that a patentholder
09:35:32 and the alleged infringer would have agreed to in a
09:35:38 hypothetical negotiation taking place at a time immediately
09:35:42 prior to when the infringement first began.
09:35:44 You've heard references throughout the trial for
09:35:47 whether Vocalife should be entitled to a running royalty or
09:35:50 a lump-sum royalty. If you find that Vocalife is entitled
09:35:55 to damages, you must decide whether the parties would have
09:35:59 agreed to a running royalty or a fully paid-up lump-sum
09:36:03 royalty at the time of the hypothetical negotiation.
09:36:06 A running royalty is a fee paid for the right to

use the patent that is paid for each unit of the infringing products that have been sold.

A running royalty can be based on the revenue from or the volume of the sales of licensed products. If there are additional units sold in the future, any damages for these sales will not be addressed by you.

If you decide that a running royalty is appropriate, then the damages you award, if any, should reflect the total amount necessary to compensate Vocalife for Amazon's past infringement.

However, a lump-sum royalty is when the infringer pays a single price for a license covering both past and future infringing sales. If you decide that a lump sum is appropriate in this case, then the damages you award, if any, should reflect the total amount necessary to compensate Vocalife for Amazon's past and future infringement.

In determining the reasonable royalty, you should consider all the facts known and available to the parties at the time the infringement began. Some of the kinds of factors that you may consider in making your determination are:

(1) the royalties received by the patentee for licensing of the patent-in-suit proving or tending to prove an established royalty;

(2) the rates paid by the licensee for the use of other patents comparable to the patent-in-suit;

(3) the nature and scope of the license as exclusive or non-exclusive or as restricted or non-restricted in terms of territory or with respect to the parties to whom the manufactured products may be sold;

(4) whether the patent owner had an established policy of granting licenses or retaining the patented invention as an exclusive right, or whether the patent owner had a policy of granting licenses under special conditions designed to preserve its monopoly;

(5) the nature of the commercial relationship between the patent owner and the licensee, such as whether they are competitors or whether their relationship was that of an inventor and a promoter;

(6) the effect of selling the patented specialty in promoting sales of other products of the licensee, the existing value of the invention to the licensor as a generator of sales of his non-patented items, and the extent of such derivative or convoyed sales;

(7) the duration of the patent and the term of the license;

(8) the established profitability of the product made under the patent, its commercial success, and its current popularity attributable to the patent;

09:39:12 (9) the utility and advantages of the patented
09:39:16 invention -- invention over the old modes or devices, if
09:39:21 any, that had been used for achieving similar results;
09:39:25 (10) the nature of the patented invention, the
09:39:29 character of the commercial embodiment of it as owned and
09:39:32 produced by the licensor, and the benefits to those who
09:39:36 have used the invention;
09:39:37 (11) the extent to which the infringer has made
09:39:43 use of the invention and any evidence probative of the
09:39:45 value of that use;
09:39:46 (12) the portion of the profit or of the selling
09:39:52 price -- price that may be necessary -- excuse me -- that
09:39:56 may be customary in the particular business or in
09:39:58 comparable business to allow for the use of the invention
09:40:01 or analogous inventions;
09:40:02 (13) the portion of the realizable profit that
09:40:09 should be credited to the invention, as distinguished from
09:40:12 non-patented elements, the manufacturing process, business
09:40:17 risks, or significant features or improvements added by the
09:40:21 infringer;
09:40:21 (14) the opinion and testimony of qualified
09:40:25 experts; and
09:40:28 (15) the amount that a licensor, such as the
09:40:31 patentee, and a licensee, such as the infringer, would have
09:40:37 agreed upon at the time the infringement began if both

09:40:41 sides had been reasonably and voluntarily trying to reach
09:40:44 an agreement; that is, the amount which a prudent licensee
09:40:48 who desired as a business proposition to obtain a license
09:40:51 to manufacture and sell a particular article embodying the
09:40:55 patented invention would have been willing to pay as a
09:40:59 royalty and yet be able to make a reasonable profit and
09:41:04 which amount would have been acceptable to a prudent
09:41:07 patentee who was willing to grant a license.

09:41:09 Now, ladies and gentlemen, no one of these factors
09:41:16 is dispositive, and you can and you should consider the
09:41:19 evidence that's been presented to you in this case on each
09:41:22 of these factors. You may also consider any other factors
09:41:27 which in your mind would have increased or decreased the
09:41:31 royalty the alleged infringer would have been willing to
09:41:34 pay and the patent owner would have been willing to accept
09:41:38 acting as normally prudent business people.

09:41:40 The final factor establishes a framework which you
09:41:45 should use in determining a reasonable royalty, that is,
09:41:49 the payment that would have resulted from a negotiation
09:41:53 between the patentholder and the infringer taking place at
09:41:57 a time prior to when the infringement began.

09:41:59 You've heard throughout this trial references to
09:42:06 whether the reasonable royalty should be a running royalty
09:42:08 or a lump sum.

09:42:09 If you find that Vocalife is entitled to damages,

09:42:13 you must decide whether the parties would have agreed to a
09:42:16 running royalty or a fully paid-up lump-sum royalty at the
09:42:22 time of the hypothetical negotiation.
09:42:26 In considering this hypothetical negotiation, you
09:42:29 should focus on what the expectations of the patentholder
09:42:33 and the alleged infringer would have been had they entered
09:42:37 into an agreement at that time and had they acted
09:42:44 reasonably in their negotiations.
09:42:45 In determining this, you must assume that both
09:42:48 parties believed the asserted claims were valid and
09:42:51 infringed and that both parties were willing to enter into
09:42:54 an agreement.
09:42:56 The reasonable royalty that you determine must be
09:42:59 a royalty that would have resulted from the hypothetical
09:43:03 negotiation and not simply a royalty that either party
09:43:06 would have preferred.
09:43:07 The law requires that any damages awarded to
09:43:14 Vocalife correspond to the value of the alleged inventions
09:43:17 within the accused products as distinct from other
09:43:21 unpatented features of the accused products and other
09:43:26 factors, such as marketing or advertising or Amazon's size
09:43:30 or market position.
09:43:32 This is particularly true where the accused
09:43:35 products have multiple features and multiple components not
09:43:39 covered by the patent or where the accused products work in

09:43:43 conjunction with other non-patented items.

09:43:47 Therefore, the amount you find as damages must be
09:43:49 based on the valuable -- the value attributable to the
09:43:54 patented technology alone.

09:43:56 In determining a reasonable royalty, ladies and
09:44:01 gentlemen, you may also consider evidence concerning the
09:44:04 availability and cost of acceptable non-infringing
09:44:11 substitutes to the patented invention.

09:44:14 An acceptable substitute must be a method that
09:44:18 does not infringe the patent.

09:44:19 Now, with these instructions, we'll proceed to
09:44:21 hear closing arguments from the attorneys at this time.

09:44:24 Plaintiff, you may now present your first closing
09:44:30 argument to the jury.

09:44:31 MS. TRUELOVE: May it please the Court.

09:44:44 THE COURT: Please proceed.

09:44:45 MS. TRUELOVE: Counsel.

09:44:47 Ladies and gentlemen of the jury, I'd like to
09:44:49 begin by thanking you sincerely for your time, the time
09:44:54 away from your lives spent here with us over these last
09:44:59 five days, particularly under these very different
09:45:03 circumstances that we're all dealing with right now. So
09:45:06 sincerely we say thank you. We can't do this without you
09:45:10 here and without your participation.

09:45:12 Also, you know, on behalf of Dr. Li and my -- my

09:45:17 colleague Mr. Fabricant and the attorneys with his firm --
09:45:20 you know, over the years I have had many opportunities to
09:45:23 work with them. And I hope that you found exactly what
09:45:26 I've found over the years is that they come in, they --
09:45:30 they present you with a case, they do a good job of it, and
09:45:33 we -- we appreciate that, as well.
09:45:35 I want to begin by talking with you a little bit
09:45:38 about some of the things that we talked about last week,
09:45:41 when I had an opportunity to visit with you during voir
09:45:44 dire. And one of the first things I want to talk about is
09:45:48 these Scales of Justice.
09:45:49 And His Honor just took an hour going through the
09:45:54 charge, that you're going to get to take back with you.
09:45:57 And you heard him talk about the burdens of proof.
09:45:59 And just to be clear and make sure you understand,
09:46:01 the burden of proof that we have, that the Plaintiff,
09:46:04 Vocalife, has had in this case is preponderance of the
09:46:09 evidence. And we showed you this back in voir dire to try
09:46:12 and illustrate a little bit about what we're talking about.
09:46:14 And what the Judge told you today is that you all
09:46:17 are the sole judges about what weight to give to the
09:46:23 evidence that you heard in the case.
09:46:24 And the evidence that you heard came from the
09:46:26 witness stand through testimony of witnesses sworn under
09:46:30 oath, deposition testimony, video testimony, again, of

witnesses under oath, and documents that were shown to you and brought to you throughout the trial. And you all get to decide how much weight to give to that testimony and that evidence.

And at the end of the day, what our obligation was, was to bring you evidence and prove by a preponderance of the evidence that Amazon has infringed the '049 patent.

So a preponderance of the evidence that they infringe, also by a preponderance of the evidence that they willfully infringe the '049 patent.

And, finally, it was our burden to prove by a preponderance of the evidence that we're entitled to damages, no less than a reasonable royalty in this case.

And we believe we've done that. And Mr. Fabricant is going to talk to you in just a few minutes about what that evidence is.

Now, the other standard that you heard His Honor talk about and talk about at length is this clear and convincing. That's not our burden. That's Amazon's burden. And that has to do with the validity of the '049 patent.

Amazon came in here, and their goal and what they're trying to show you is that the patent is invalid.

So make a mental note to yourself or take your notebook when you go back in there and flip to the page

09:47:50 with Dr. Stern, remember him, the expert witness that they
09:47:54 brought in, and write up there clear and convincing,
09:47:57 because that's the burden of proof that he's being held to.
09:47:59 And the reason why Amazon is being held to that
09:48:04 higher standard, why they have to bring a greater weight of
09:48:07 the evidence to prove invalidity of this patent is because
09:48:10 there's a presumption that the patent is valid.
09:48:14 It's been prosecuted, it's been presented to the
09:48:17 Patent Office, and there is that presumption, and they have
09:48:20 to overcome it. And that's why that standard is higher.
09:48:23 Now, I want to talk to you about something that I
09:48:27 didn't really talk to you about during voir dire, and I --
09:48:31 I find, I don't usually take the time to do this, because,
09:48:35 in my experience over the years that -- that I've done jury
09:48:39 trials, and particularly here in East Texas, is that our
09:48:42 jurors in East Texas are really, really good judges of
09:48:47 character.
09:48:47 One of your jobs and one of the first things that
09:48:50 His Honor told you when he read you that charge, is that
09:48:53 you are the sole judges of the credibility of the
09:48:56 witnesses. You alone.
09:48:58 And what does that mean? He told you, you get to
09:49:01 use your common sense. And you evaluate everything that
09:49:06 you heard from the witness stand and everything that you
09:49:09 heard through deposition testimony.

09:49:11 And, in this case, you heard testimony from two
09:49:14 different types of witnesses, right? You heard testimony
09:49:16 from fact witnesses, people who came and just told you what
09:49:20 they knew. And then you heard testimony from expert
09:49:23 witnesses.
09:49:26 And expert witnesses were those individuals that
09:49:28 came up to talk to you about the technical aspects of the
09:49:31 case, about the damages.
09:49:33 And here's the thing about expert witnesses -- and
09:49:38 what -- and what His Honor told you in the charge, which is
09:49:41 that you're not required to accept that opinion. Just
09:49:44 because someone comes on the stand and cloaks themselves in
09:49:48 this cover of I'm an expert, doesn't mean you have to throw
09:49:52 your common sense out the door. It doesn't mean that you
09:49:56 have to accept any or part of their testimony.
09:49:57 And so I want to kind of use an example of what
09:50:00 I'm talking about as far as judging credibility, thinking
09:50:05 about the witnesses that you heard from, and I want to
09:50:08 speak a little bit about Dr. Zhu.
09:50:10 Remember her? She was the second witness in the
09:50:12 case. She told you that she was born and raised in China,
09:50:16 got her Bachelor's and her Master's degree in China. She
09:50:20 told you -- obviously, English is her second -- second
09:50:24 language.
09:50:25 She traveled to this country to come get her Ph.D.

09:50:29 speaking very little English, having a grasp for the
09:50:32 written word and writing the word, but really not speaking
09:50:35 it well. And she learned that by watching television.
09:50:37 She is one of the inventors in this case. You
09:50:41 heard her tell you that. And she went and worked for, at
09:50:45 the time, Dr. -- Dr. Li's company, Li Creative. And she
09:50:49 worked -- she worked on this invention for years before she
09:50:54 came up with it. And she came here, and she told you about
09:50:57 all that.
09:50:58 And -- and what I want you to think about is
09:51:01 really and truly the encourage that that had to take for
09:51:04 her to come here. She's an inventor. She doesn't own the
09:51:08 patent.
09:51:10 You heard no testimony about any financial
09:51:13 windfall she's going to get if you find that Amazon
09:51:16 infringes the patent and determine that they should have to
09:51:19 pay for their use of the '049 patent.
09:51:22 She subjected herself to cross-examination.
09:51:32 Why -- why would anyone do that? Because it's her
09:51:35 invention. It's part of her life's work.
09:51:38 She no longer works for Mr. -- for Dr. Li's
09:51:42 company. She's working at a different company. She left
09:51:45 her kids back in Newport -- New City, New York, and
09:51:51 traveled here. That's courage.
09:51:53 And you're able and entitled to look at her

testimony and evaluate it and determine that it is, in fact, credible.

And I want you to ask yourself when you're -- when you're looking at all the witnesses in the case and what they testified to, and particularly Dr. Zhu in coming here and subjecting herself to cross-examination, remember -- remember what she was cross-examined about?

They put her declaration up there on a patent that's not at issue in this case, and they -- and they tried to get her to fold. By what? Reminding her, threatening her, she could go to prison for five years for coming here and giving her testimony?

I was raised -- and there's a phrase that I heard over and over again growing up as I struggled with -- with dealing with certain people, and my mother would always say: Courage is fire; bullying is smoke.

And that's your job in this case. You -- you are the smoke detectors.

So, as you hear the argument today, Mr. Fabricant -- I'm about to yield the podium to him and let him come up and talk to you -- he's going to speak to you for a few more minutes. And then the Defendants are going to get up and talk to you and tell you their take on the case. And then Mr. Fabricant will have an opportunity, because it is our burden to prove to you infringement in

this case, to get back up and speak to you for just -- for just a little bit longer before you go and deliberate.

And what I want you to do is use your common sense, evaluate the -- the evidence, and -- and determine where that smoke is.

Thank you.

MR. FABRICANT: Good morning, members of the jury. It's been -- it's been an honor to present our case to each of you and to have the privilege of presenting a case to this Court in East Texas.

I do believe this case is all about credibility. And I'm going to touch upon some of the things that I'm sure you'll remember from the testimony, most importantly.

So we do have the burden of proof on infringement. And our case was essentially proven through Joe McAlexander from Richardson, Texas, who put the claims up and walked through the claims, and pointed out in detail how each and every element of these claims was met, both for Claim 1 and Claim 8.

And Mr. McAlexander made clear that the patent was infringed when the user plugged the device into the wall and spoke the wake word. As soon as the user speaks the wake word, the device performs all of the steps that are claimed in Claim 1 and are claimed in Claim 8.

I don't think there's any dispute in this case

09:55:03 that Amazon intentionally sells those products to its
09:55:06 customers. I don't think there's any dispute in this case
09:55:08 that Amazon expects and intends the customers to use the
09:55:11 Echo devices.
09:55:12 And, in fact, as I'm sure you'll remember from the
09:55:16 Amazon witnesses, they want engagement. They want millions
09:55:20 of customers to use the Echo devices to create tremendous
09:55:23 business for Amazon. When they buy music, when they buy
09:55:27 videos, when they buy dog food, whatever it is, it doesn't
09:55:31 matter, they want a new way of doing business in the United
09:55:36 States where you use that Echo device.
09:55:38 The other thing that we learned, which was
09:55:40 critical -- this is about the microphone array that sits on
09:55:42 top of that device, without which there would be no Echo.
09:55:47 And without the Echo, there would be no Alexa.
09:55:50 Amazon spent this entire case trying to get the
09:55:53 jury to believe that Alexa, that beautiful graphic they
09:55:59 had, that beautiful movie they had, that thing up in the
09:56:03 Cloud, is the Echo. That's not the Echo. The Echo is the
09:56:06 device. And Dr. Li and Dr. Zhu created the ability for
09:56:11 that device to work.
09:56:12 Now, let's talk about credibility. You'll
09:56:16 remember -- most memorable to me was Dr. Kiaei, who was
09:56:22 their technical expert. You have to believe what Dr. Kiaei
09:56:27 told you because that's the man who says they don't

09:56:30 infringe.

09:56:31 And the first thing he did was he took the witness
09:56:34 stand. And Mr. Lambrianakos, my partner, was up here. And
09:56:38 during opening, Amazon's counsel told the jury and the
09:56:40 Court that Dr. Kiaei was one of the world's foremost
09:56:46 experts on audio processing.

09:56:47 And we did a little digging, and we found out on
09:56:52 the Internet that this man has a website called
09:56:57 Hitechexpertwitness.com. And when we looked at the
09:57:00 website, he didn't even list audio processing as any one of
09:57:05 his 10 areas of expertise.

09:57:07 And then we found his 25-page resume attached to
09:57:12 his website where you can go and hire him and pay him lots
09:57:15 of money. And nowhere in those 25 pages were the words
09:57:18 "audio processing" even mentioned.

09:57:20 Now, I'm sure Amazon didn't know that. I'm sure
09:57:23 when Amazon represented to the jury at the opening that
09:57:26 this is one of the world's foremost experts, that they
09:57:30 believed that. We were surprised to find that out.

09:57:32 But then we asked him, and we gave him an
09:57:35 opportunity to say, well, no, I have experience, but that's
09:57:38 really not where I'm an expert. And he admitted on the
09:57:42 stand, yes, I am an expert. I am one of the world's
09:57:45 foremost experts. Right away, you have to say to yourself,
09:57:51 is this a credible person?

09:57:55 And then, equally important, the other way that
09:58:01 Amazon has denied infringement here is through Mr. Hilmes,
09:58:05 who sat throughout the trial at the counsel table.
09:58:11 He wrote an article in 2018, along with six other
09:58:14 Amazon engineers. Every author was an Amazon engineer who
09:58:19 worked at Lab126 on the Echo devices, every one of them.
09:58:22 And they wrote this article. And it wasn't just any
09:58:26 article. It was an article submitted to the scientific
09:58:30 community called a peer-review.
09:58:31 And Mr. Hilmes admitted, it has to be accurate, it
09:58:33 has -- it's going to be examined. This is the scientific
09:58:37 community. Their reputations are at stake.
09:58:39 Well, I strongly recommend that you take that
09:58:43 exhibit back to the jury room because that one article
09:58:48 written in 2018 sets forth every single element of the
09:58:55 Claims 1 and 8 that are being practiced here.
09:58:58 And here's the key. It was written in 2018 before
09:59:03 there was any lawsuit, before there was any concept that
09:59:07 there would be a lawsuit here and a trial. It was written
09:59:11 at a time when these seven Amazon engineers were telling
09:59:15 the truth about how their device worked.
09:59:17 And, please, when you read that article, you will
09:59:21 see it expressly says, this is how the Echo device works.
09:59:25 And now Mr. Hilmes comes into the courtroom, and
09:59:30 he denied from the witness stand that the Echo works as the

article describes. And he expressly said from the stand that the article is incorrect, that those items are not in the Echo devices, that that's not how it works. That's number two.

Number three, perhaps most troubling, is Amazon had another technical expert, Dr. Stern. He was here for invalidity. He was not here for infringement. He was the second expert.

And you may recall that from the witness stand, Dr. Stern, who is an expert in audio processing, who does teach that subject at Carnegie-Mellon University, a fine university, he admitted from the stand that the type of beamforming, super directive beamforming that Amazon uses, is adaptive beamforming. Directly contradicting Dr. Kiaei. Directly contradicting Mr. Hilmes.

And you can see from his face on the witness stand, he said: I want to take it back. He said: But I can't take it back because of this Court's construction of what adaptive beamforming means.

And, therefore, you have some very strong evidence of inconsistent statements, of problems with credibility, issues that when you deliberate back into the jury room, you should take into consideration.

Dr. Zhu and Dr. Li spent years working on this invention.

10:01:09 THE COURT: 17 minutes have been used.

10:01:10 MR. FABRICANT: Thank you, Your Honor.

10:01:11 And I think the one thing that should be clear is that Amazon has presented this case that there's a textbook. And in that textbook, you can find 400 pages about different subject matters, different articles.

10:01:33 If it was so easy, why did it take the Amazon engineers with the Brandstein textbook in hand such difficulty to come up with a device that worked? If it was so easy, why did it take Dr. Li and Dr. Zhu -- this is very, very complex technology.

10:01:52 When you look at some of the documents in the jury room, you'll see that it looks like it's language from a foreign planet, these algorithms, these mathematical calculations. And this is extremely difficult technology. It was not obvious. It was not easy. It was not known.

10:02:08 And I believe that the evidence will -- will show and persuade you, again, when you go back to the article that the seven engineers of Amazon wrote back in 2018, that each and every element of the Claim 1 and 8 are present.

10:02:33 There were other documents which were introduced into evidence at trial. There was the -- the block diagram, which was, again, written years before the lawsuit. No lawsuit. No reason why Amazon would incorrectly set forth a block diagram which specifically

10:02:57 teaches adaptive beamforming, which the Defendants to this
10:03:02 minute deny exist in their products.
10:03:04 And here on the left is the testimony of Dr. Stern
10:03:09 admitting from the witness stand that the directive
10:03:14 beamforming is adaptive beamforming, adaptive beamforming.
10:03:18 And he was asked, and you heard Dr. Kiaei say:
10:03:26 Amazon uses a super directive beamformer, right, sir?
10:03:30 Yes.
10:03:31 That means Dr. Kiaei, if you believe Dr. Stern,
10:03:34 the real expert, is infringing on that element.
10:03:35 So how can you believe Dr. Kiaei with the rest of
10:03:38 his testimony with anything he had to say when it came to
10:03:41 the other subject matters.
10:03:43 Dr. Kiaei took the witness stand and said a
10:03:46 digital signal processor, that was a computer chip, and we
10:03:51 put up the tear sheets to show you the Intel chip and the
10:03:56 MediaTek chip. He actually stood -- sat in the witness
10:04:00 chair and said that's not a digital signal processor, and
10:04:03 we put up the documents that said this is a digital signal
10:04:05 processor.
10:04:05 But yet he on the witness stand refused to admit
10:04:09 it was a digital signal processor.
10:04:10 And so I believe when the credibility of the
10:04:18 Amazon technical experts is examined and compared with the
10:04:25 testimony of the Amazon fact witnesses, we have presented a

very strong case, beyond the preponderance of the evidence. Remember, a preponderance of the evidence means ever so slightly the Scales of Justice tip, ever so slightly.

I will return after the opening -- after the opening -- closing argument of the Defendants and complete my -- my closing remarks.

Thank you very much.

THE COURT: All right. At this time, we'll hear closing arguments from the Defendants.

Mr. Hadden, you may proceed when you're ready.

MR. HADDEN: Thank you, Your Honor.

Good morning. And thank you. Thank you for your service, thank you for your time, and thank you for your attention. I appreciate it. The folks at Amazon appreciate it.

When this case started, Mr. Dacus told you that this case was important to Amazon. This case is important. It's important because Amazon engineers, like Mr. Hilmes, like Mr. Prasad, like Dr. Chhetri, they worked very hard for years to develop something truly remarkable, the Echo and Alexa.

Before the Echo, there was no such thing as a smart-speaker. Before the Echo, there was no device that did that very difficult far-field speech recognition process that Mr. Prasad talked about. There was no device

that could hear you speaking in a crowded, noisy room at any time from any location and wake up and then understand what you said and do what you asked.

And, in fact, as Mr. Prasad explained, at the time they started, it didn't even seem like a solvable problem to most of the members of his team.

But with hard work, Mr. Hilmes and Mr. Prasad and literally hundreds and hundreds of other engineers and scientists at Amazon solved that problem, and they made it work.

And when you work that hard and that long on something that difficult and you succeed and then you have someone falsely claim that they did it first and that you took their solution, that's unfair. And that's why Amazon is here.

Amazon is here to defend Mr. Hilmes, Mr. Prasad, and all of their colleagues at Amazon who did invent the Echo and did invent Alexa.

Now, this is a patent case. And, as you heard, determining issues of infringement and invalidity, you're going to have to look closely at the details of those claims, Claim 1, and the detailed language, and determine whether it really matches up to how an Echo operates and whether it matches up to descriptions of what was known before this patent, like that textbook from Dr. Brandstein.

10:08:12 That is what you're going to be asked to do.

10:08:14 Now, in Vocalife's opening, and I think we're going to hear more of it in the rest of their closing, Vocalife told a story, a different story. And that story really has nothing to do with analyzing the claims and determining how an Echo works and what Dr. Brandstein's book described. That story and whether it was true is important. It's important to assess the credibility and believability of Vocalife's patent claims in this case.

10:08:51 So let's look at the evidence and the facts.

10:08:55 And we can do that starting with a timeline. And this timeline starts in 2001 when Professor Brandstein published his book on microphone arrays.

10:09:07 And we can jump forward in this timeline, then, to 2011, when Dr. Chhetri, who's working at Amazon designing the microphone arrays and signal processing algorithms for the product that became the Echo.

10:09:25 And we have his notebook, and you saw it. It's Defendants' 27. And in it, he noted, and this is in February of 2011, that he had been studying Mr. Brandstein's textbook, as well as other technical papers in the field.

10:09:42 And, of course, that's what scientists do. They learn from what others have done in the past, and they try to advance it. They try to add to it, and that's what he

was doing.

And what he did was he decided the best way to solve the problem he was working on was to adapt this super directive fixed beam beamformer that was described in Chapter 2 of Mr. Brandstein's textbook.

And the other thing that he decided at that point was that it would work well in a circular array of microphones. And that's what you see in the little diagram at the top. It looks like a hexagon. But that's because he was showing there would be six microphones equally placed around the circle and one in the middle.

And, of course, that is the design that ultimately became and was used in the Echo.

And, as Mr. Hilmes testified, that same basic design, that same basic fixed beam super directive beamformer algorithm are what underlie all of the Echo products since. Some of the products added more microphones or fewer microphones, but they all worked essentially in that same way.

Now, if we skip forward to December 2012, Mr. Hilmes joins Amazon. And he joins Amazon as the head of the group that Dr. Chhetri was working in, the head of the group developing the audio technology for the Echo device.

And he and his team at Amazon came to fruition and

10:11:18 create a problem -- create a product based on the ideas
10:11:22 Mr. Chhetri -- Dr. Chhetri had back in February of 2011.
10:11:26 And then if we skip forward a few months later,
10:11:29 Mr. Prasad, who you heard from, joined Amazon, as well.
10:11:32 And he was working on the other part of that
10:11:37 Echo/Alexa combination, the brain in the cloud, the part of
10:11:43 Alexa, the machine learning, deep neural net that allow
10:11:48 Alexa to understand the words you speak from the sounds
10:11:50 that the Echo sends up to it and then to understand the
10:11:54 meaning of those words and what your intent is, what you
10:11:58 would like Alexa to do.
10:12:00 Again, that was an incredibly difficult problem.
10:12:03 These were cutting-edge issues in machine learning and
10:12:06 artificial intelligence, as well as audio processing. But
10:12:10 working together, Mr. Hilmes and Mr. Prasad and their teams
10:12:14 solved it. They solved the problem.
10:12:16 And they made a device, the Echo, and it was a
10:12:20 truly remarkable device. For the first time, the Echo and
10:12:27 Alexa brought cutting-edge, artificial intelligence
10:12:35 technology into the homes of millions of people. And it
10:12:37 allowed them to be entertained, to be informed, and to
10:12:39 perform thousands of tasks with a convenience that was
10:12:43 never available before.
10:12:45 And those engineers, including Mr. Hilmes and
10:12:48 Mr. Prasad and hundreds and hundreds of others at Amazon,

10:12:53 were very proud of what they accomplished. You heard
10:12:56 Mr. Prasad say that it was the accomplishment of his
10:12:58 lifetime.
10:13:00 Now, let's look at another timeline. This
10:13:07 timeline begins around January of 2011 when Dr. Li and
10:13:11 Dr. Zhu were trying to build the conference phone called
10:13:15 the VoiceFocus, using adaptive beam technology.
10:13:20 And in 2011 they went to the Consumer Electronics
10:13:29 Show with their device, but the device didn't work.
10:13:32 As Dr. Zhu testified, it was a dummy device. It
10:13:36 didn't do anything.
10:13:36 And you heard Mr. Fabricant in the opening talk
10:13:40 about what a wonderful device this was and how it won this
10:13:44 award. But as Dr. Zhu acknowledged the only award it won
10:13:52 was for how it looked because it didn't work. In fact, up
10:13:54 until the time she left Dr. Li's company, they could never
10:13:55 get their conference phone with adaptive beamforming to
10:13:57 work.
10:13:58 So then in October 2011, Dr. Li meets with some
10:14:07 engineers at Amazon who were working on the Fire Phone.
10:14:12 Now, as you heard from Mr. Hilmes and you heard
10:14:15 from Mr. Holland, these meetings are utterly routine at
10:14:19 Amazon. Amazon is involved in a wide range of
10:14:25 technologies. And other technology companies literally
10:14:28 line up to try to work with them, to provide components and

10:14:32 technology to Amazon products.

10:14:35 So they had this meeting, and we have the notes
10:14:40 from Amazon contemporaneous with this meeting. And what
10:14:45 did they find? They found that they were not impressed
10:14:49 with Dr. Li's company.

10:14:51 And probably, most importantly, we saw the video
10:14:54 testimony of Mr. Holland. And Mr. Holland is a key witness
10:14:59 here because he is the only person at that meeting who has
10:15:04 no stake in this case. He has no dog in this fight. He
10:15:08 quit working at Amazon years ago. He's at a new company.
10:15:11 But he testified, and he described what he remembered.

10:15:15 And what he remembered was: The demonstration,
10:15:19 from my memory, did not go very well. From my memory, it
10:15:22 did not demonstrate any capabilities that would have been
10:15:25 beneficial to us.

10:15:26 So then we go forward a couple of years, and
10:15:30 Dr. Li comes back to Amazon trying to get a job. And he
10:15:35 has phone interviews, first with Mr. Prasad.

10:15:39 Mr. Prasad indicated in the notes that he wrote
10:15:43 during that interview at the time that he was not inclined,
10:15:51 that Dr. Li did not appear to have the capabilities and the
10:15:57 expertise in machine learning and artificial intelligence
10:16:01 that he was looking for.

10:16:02 In fact, he got the sense that Dr. Li was more
10:16:04 interested in trying to sell his company than he was

joining a team to build a new product.

We also have the phone interview with Mr. Hilmes. Mr. Hilmes was someone more positive about Dr. Li than Mr. Prasad was. But, again, he indicated at the time during the interview while he was speaking with Dr. Li, he says: I spent most of my time asking him technical questions about beamforming and AEC. And he did not do very well with several of these questions.

So, again, there was no follow-up. Dr. Li was not a fit for Amazon, and he didn't get a job there.

Then we go forward to 2014, and Dr. Li and Dr. Zhu were among hundreds of folks in the tech community around New York, and they were invited to this launch event for the Echo, and they came and they saw it.

And then six months later or so, Vocalife and Dr. Li tried to sell the patent that they got reissued into the patent in this case. As Mr. Dacus will show you, the differences between that patent and the patent in this case are miniscule. And he tried to sell that patent to Google for $700,000.00. And Google said, no, thank you.

And this is the form where he submitted his offer to sell the patent for $700,000.00, the patent outright, not just the license. And Google said, no, thanks.

So then, finally, in September of 2018, Vocalife got the patent -- the '049 patent reissued that they are

asserting in this case.

Then, in November of 2018, Vocalife and Dr. Li were working on a product. And the product was not a smart-speaker like an Echo. It was just a circular microphone array.

So this is interesting. This is the document, their industrial design concept. And you can see they marked it confidential. But if you look inside, what it says is: See Amazon Echo for reference.

So in 2018, Dr. Li was trying to copy, at least the look of the Amazon Echo, for use in his own product.

And that product did not succeed, as Mr. McAlexander testified. Dr. Li has had no commercial success.

Then, finally, in April of 2019, Dr. Li and Vocalife filed this lawsuit. Now, if you just look at this timeline, there's almost five years after Amazon launched the Echo.

Now, this is a slide that Mr. Fabricant put up in his opening in this case, and he put it up to suggest that Amazon has some practice of meeting with companies, small companies like Dr. Li's, and then taking their technology.

But we know the truth now. We heard the testimony from Mr. Prasad. And what did he say -- this -- this slide mentions two companies, Yap and Nuance. And what did

10:19:41 Mr. Prasad say?

10:19:42 Did you take Yap's technology?

10:19:44 No. In fact, Amazon bought the entire company.

10:19:48 With Nuance, did Amazon steal Nuance's technology?

10:19:54 No. Amazon licensed Nuance's technology.

10:19:59 So when Amazon meets with companies who actually have valuable, useful technology, technology that would be useful in Amazon's product or services, Amazon pays for it.

10:20:14 That's what Dr. -- Mr. Prasad testified to.

10:20:18 And, in fact, Dr. Li shopped his technology and his patents not just to Amazon and Google, but to all these other companies. There were 20 companies. And not a single one of them found it was worth paying for.

10:20:35 So now let's look at the patent and those claims we have to look at. And if we start with -- and as Your Honor -- as Judge Gilstrap instructed you, there are only two claims at issue in this case. One is Claim 1, which is an independent claim, and then there's Claim 8, the dependent claim.

10:20:52 And there's a lot of words and there's a lot of details in these claims, and we're going to have to go through them, and you're going to have to analyze them.

10:21:00 Bu,t at a high level, there is a simple distinction between what this patent does and what this patent requires and what Echos do. And it involves the way

that these beams, you've heard about, are formed and when they're formed.

And the difference is that in the '049 patent, the beams don't get formed -- the beam, rather, until the device has located a target sound source, that is, somebody or something that it wants to listen to.

And at that point, it creates a beam in the direction of that target sound source. And then the beam is steered to follow that sound source if it moves. That's what the patent requires.

But the Echo doesn't do that. The Echo has fixed beams. When you plug an Echo in, these beams come to life, and they are always the same, and they never move. In fact, they're preprogrammed in the factory.

And we see when we look at the claim language, there are a few places where this difference stands out. And one of them is in this determining a delay limitation that we talked about.

And, as Mr. Hilmes explained, when the Echo is processing audio, there's no delay that is calculated between each microphone and an origin of the array, as the claim required.

The Echo doesn't do it because it doesn't need to do it because it has these fixed beams that are already preformed. They don't depend on any determination of a

delay. They don't have to depend on an angle to target.

And Dr. Kiaei found the same, after studying the source code in the Echo products. And that's the only way you can definitively determine what the product does. You have to read the computer code. And he spent weeks doing it. And he confirmed that Mr. Hilmes was right, the beams do not change. They're fixed.

So, for that reason, at least this piece of the claim, as you heard, will not -- does not match what the Echo does.

And there's another similar element that requires explicitly the steering of the beam to follow the user. And we saw the patent required this. It requires that you -- the device form a beam, and then follow the user by changing those weight coefficients you heard about based on the direction the user is at any point in time.

And, again, as Mr. Hilmes testified, the Echo doesn't do that. The beams are always in the same places pointing in the same directions. Different beams get selected depending on which one is the strongest, but the beams never change. They're programmed in the factory. You can't -- the expert confirmed.

So those two elements at least are not used by Echos when they're used by customers. So for that reason, there can be no infringement in this case because Claim 8

depends from this claim. And, as the Court instructed, if the dependent -- if the independent claim is not met, the dependent claim can't be met.

Now, I think it's useful to understand why Mr. Hilmes and Amazon built the Echo the way they did. And, just to be clear, on this paper that Mr. Fabricant talked about, that was a research paper. That was explaining different ways that this can be done.

And there's no dispute that Amazon has tried what the patent requires. It has experimented with that adaptive beamforming, beam steering approach. Amazon's tried it in its laboratories, but it has never used it in an Echo. And it doesn't use it, for a couple of reasons.

The first one that Mr. Hilmes described was because the Echo needs to instantly be able to hear and recognize that wake word, "Alexa," and wherever it comes from, the Echo works better by having these pre-set beams because they're always on when the device is on, and they're always capable of catching that wake word without having to first locate where the person is who's talking.

The other reason, Mr. Hilmes explained, was to do what the patent requires. We first have to find the source, and then do these complicated calculations to form a beam. That takes a lot of computing power on the device. And Amazon wanted to make the Echo affordable. They didn't

want to put that expensive of a processor in the device.

And, finally, as Mr. Hilmes and Mr. Prasad explained, there's a tight connection between the Echo and that machine learning in the -- in the Cloud, because those algorithms in the Cloud, those artificial neural networks, they're all trained using audio sound that is sent up from actual Echo devices. And so all of that training has been done with these fixed beams.

And, as Mr. Hilmes and Mr. Prasad explained, if the beam suddenly changed or moved, a lot of that training would then be mismatched. It would be lost. And the speech recognition performance would degrade. It would not work as well.

So what's what Amazon -- that is why Amazon does what it does, and why it does something different than what this patent requires.

Now, when we look at what Vocalife's expert used to try to show that the Echo does what the claim requires, he didn't show you any source code where these delays were actually calculated or he didn't show even any actual delays. What he showed you was this kind of cartoon character from an Amazon presentation.

But this cartoon did not depict or approve all of the requirements of that claim. Maybe more importantly, this cartoon doesn't even describe the Echo.

10:27:33 As Mr. McAlexander admitted, this presentation
10:27:40 that he took this slide from was not about the Echo at all.
10:27:43 It was about another service that Amazon offers for
10:27:46 developers of other products to build their own devices
10:27:50 that can communicate with Alexa.
10:27:52 And Mr. Hilmes confirmed this slide describes
10:27:59 nothing about how the Echo works.
10:28:00 Now, this is a very important point. This is a
10:28:06 very unusual case. In this case, Vocalife has no claim
10:28:13 that Amazon itself directly infringes this patent. The
10:28:16 only claim in this case against Amazon is that Amazon
10:28:21 actively induces its customers to infringe.
10:28:25 And, as the Court noted and pointed out in the
10:28:32 instructions, to prove active inducement, Vocalife doesn't
10:28:37 only have to prove that the Echo device when it's used does
10:28:40 everything in the claim, Vocalife has to prove that Amazon
10:28:45 knew that by using an Echo, its customers would infringe
10:28:49 this patent, or Amazon -- or Vocalife would have to show
10:28:55 that Amazon subjectively believed it was highly likely that
10:29:00 its customers infringe and avoided confirming that fact.
10:29:05 Now, you have heard no evidence in this case on
10:29:09 this issue. Vocalife has presented no evidence that Amazon
10:29:14 knew the Echo device infringed or that it was --
10:29:18 subjectively believed it was highly likely and then tried
10:29:23 to avoid that issue.

But this is part of Vocalife's burden of proof. If they do not prove this, you cannot find that Amazon infringes.

And the only evidence we have, actually, on this issue was the testimony from Mr. Hilmes.

Now, Mr. Hilmes testified that as soon as this lawsuit was filed, because he was the head of Amazon's audio technology group, he read the patent, and he analyzed the patent. And he concluded that Amazon did not use what the patent required because it used those fixed beams that we talked about and not the adaptive steer beams the patent requires.

So this is the sole evidence of what Amazon believed when this case was filed.

So if we just stop here, even if you ignore the details of how the Echo works and whether it matches up with that claim or not, to find that Amazon infringes in this case, you would have to find that Mr. Hilmes lied to you on the witness stand about what he believed after reading this patent.

THE COURT: 25 minutes have been used.

MR. HADDEN: Thank you, Your Honor.

That is the only way that you can find that Amazon infringes.

So when you get to that verdict form, the evidence

10:30:53 we think shows that you have to check "no" on Question 1.

10:30:57 Now, let me talk quickly about validity. There

10:31:02 are few things that are undisputed about validity in this

10:31:06 case.

10:31:07 The first is that all of these concepts from the

10:31:09 patent, all these technologies that Mr. Fabricant talked

10:31:14 about in his opening were known. Dr. Li admitted on the

10:31:17 stand they were known. Dr. Zhu admitted they were known.

10:31:21 Dr. Stern showed that they were known.

10:31:22 The other thing that is undisputed is that the

10:31:26 Brandstein textbook on microphone arrays was never

10:31:29 considered by the Patent Office.

10:31:34 What is also undisputed is that when Dr. Li went

10:31:37 from converting his provisional patent to an actual patent

10:31:41 that the Patent Office would look at, he removed all the

10:31:44 references to the Brandstein book.

10:31:46 What is also undisputed is that even

10:31:55 Mr. McAlexander agreed that everything in Claim 1 is in the

10:31:57 Brandstein book. The only thing he disputed was whether

10:32:01 those three audio algorithms, the sound source location

10:32:07 unit, the adaptive beamforming, and noise reduction would

10:32:11 all -- would have been obvious to all run on the same

10:32:14 digital signal processor. That is clearly the case.

10:32:17 The Brandstein book itself describes using a

10:32:20 digital signal processor. This Computerworld article 10

10:32:25 years before the patent talked about using a digital signal
10:32:29 processor.
10:32:29 Dr. Li's own article shows the beamforming and
10:32:32 noise reduction being used on a single digital processor.
10:32:40 Then there's a simple question: If you have a
10:32:41 digital signal processor which is specially built to
10:32:43 perform these types of calculations, why would you not do
10:32:47 them all on that digital signal processor?
10:32:48 And, essentially, Mr. McAlexander said: Yeah, I
10:32:51 would agree, you would.
10:32:52 The only other issue that Mr. McAlexander noted
10:32:55 with this book is it has a bunch of chapters and a table of
10:33:04 contents, and you would have to look at different chapters.
10:33:07 But there's nothing in the patent law that says a
10:33:12 book can't have chapters. And the notion that a person of
10:33:15 ordinary skill would not know how to read the table of
10:33:18 contents, is just not credible.
10:33:18 The last issue is Claim 8. And, again, it's
10:33:20 undisputed between the experts that this Abutalebi patent
10:33:25 describes exactly the added feature in Claim 8.
10:33:37 MR. DACUS: Good morning. I want to spend just
10:33:39 the last few minutes we have here on a couple of topics.
10:33:43 And the first topic I want to briefly touch on
10:33:47 are -- are the damages -- or the amount of money that
10:33:49 Vocalife seeks from Amazon.

10:33:51 And, as you might imagine, it pains me to talk
10:33:54 about damages and the amount of money because Amazon
10:33:57 certainly believes that they don't owe these folks anything
10:34:00 at all, not one dime.
10:34:02 But, as I told you at the beginning of this case,
10:34:04 if you -- if you listen closely to Plaintiff's request for
10:34:11 money and the method or the process they go through to
10:34:14 reach and ask for ultimately $30 million, it tells you a
10:34:18 lot about what cases are really about. And it tells you a
10:34:23 lot about the credibility or believability, not only of the
10:34:26 damage claim, but other parts of their case.
10:34:28 And I certainly think that's true in this case,
10:34:34 and here's why.
10:34:34 The Judge just gave you these jury instructions.
10:34:37 And what he said -- and you can look at them when you go
10:34:40 back there. It's on Page 24 and 25, if you want to look at
10:34:44 it.
10:34:45 He says: The law requires that any damages
10:34:47 awarded to Vocalife correspond to the value of the alleged
10:34:49 inventions within the accused products -- within the Echo.
10:34:55 Therefore, the amount you find as damages must be based on
10:34:58 the value attributable to the patented technology alone.
10:35:03 Those are very important instructions. And
10:35:08 instruct -- they are instructions, they are the law that
10:35:11 Vocalife and their expert completely violated.

10:35:14 You heard it from the witness stand. Vocalife and
10:35:18 their expert used this concept, downstream economic value,
10:35:23 DEV, that's the profits on the sale of Amazon products that
10:35:28 occur through not only the Echo but computers, tablets, and
10:35:35 phones. Those things don't have these microphone arrays in
10:35:38 them. Those things don't involve the patent.
10:35:41 The Court just told you, you can only value what's
10:35:45 in the accused product, the Echo. Yet they included
10:35:48 additional products.
10:35:49 Furthermore, they included sales of things like
10:35:53 dog food, towels, whatever you buy on Amazon.com, the
10:35:58 profits of those that have nothing to do with the
10:36:02 microphone arrays that are accused of infringement in the
10:36:05 '049 patent.
10:36:06 And they use that -- you remember this
10:36:10 calculation. They use that, that $57.36 as the entire
10:36:16 basis of their calculation and request for this
10:36:18 $30 million. And the Court's instruction says you cannot
10:36:21 do that.
10:36:21 Now, there were other problems. You heard all of
10:36:28 this testimony in the last two days, so I'm not going to
10:36:31 belabor it because I'm confident you remember it. But
10:36:34 there were other problems with Mr. Ratliff on behalf of
10:36:39 Vocalife's use of this DEV.
10:36:40 For one thing, it's a projection or an estimate.

10:36:44 And he failed to use the actual information that Amazon
10:36:46 produced in this case.
10:36:47 Amazon produced the actual profits related to
10:36:52 sales of Amazon products that go through the Echo device.
10:36:54 And that's what the Court has just told you in your
10:36:56 instruction that you must limit your damages to.
10:36:58 And when you use those actual sales through the
10:37:02 Echo device, rather than $57.00, the number is actually
10:37:09 13 cents. And you may say, well, that seems like a low
10:37:14 number, and you'd be right.
10:37:15 But the reason is, because for the most part,
10:37:18 consumers, who buy an Echo device, don't order on
10:37:22 Amazon.com through the Echo. They do it through their
10:37:24 computer, through their phone, or through all sorts of
10:37:29 other ways. But people just don't use these Echos, for the
10:37:32 most part, to order other Amazon devices -- I mean,
10:37:35 other -- other Amazon products.
10:37:37 Now, there's a whole list of reasons that we went
10:37:40 through with Mr. Ratliff that Mr. McGavock explained as to
10:37:44 why this DEV calculation was wrong.
10:37:47 You remember Mr. Ratliff admitted that he thought
10:37:49 it included the actual loss on the sale of the Echo
10:37:53 product. And you know from the evidence now that it does
10:37:55 not, and that's -- that's a significant issue.
10:37:57 He failed to use or include all of the expenses

and properly calculate the profit. He failed to adjust for the fact that there are multiple Echos in some houses, this aggregation factor -- remember Mr. Ratliff said: I thought that was included in the DEV. You know from the evidence now it was not.

He used this Echo sales channel apportionment, which is the 6.7 percent that he included in his calculation that you heard Mr. McGavock say he's never seen anyone in 35 years use anything like that.

And the list goes on and on.

In the end, you know why he overstated all those different components. I mean, it's -- it's clear why he did that. There's only one way that you can get to this very large number that they want from Amazon in this case.

Ultimately, Mr. McGavock did a calculation that was based on the actual purchases that were made through the Echo device, which is what the Court's told you you should be looking at. He calculated that royalty per unit, he multiplied it by the number of Echos that have been sold, which is the 19 million -- just under 19 million, and the total royalty is $134,000.00.

Now, Mr. McGavock also explained to you that should be the royalty. If you reach damages in this case, that should be the royalty that you find.

But he also gave you another data point. And he

10:39:30 said, look, if you're contemplating this hypothetical
10:39:35 negotiation that occurred between Dr. Li and Amazon, we
10:39:37 already know what one party, Dr. Li, would have accepted
10:39:40 for this patent, because he made an offer to Google to not
10:39:46 only license it -- all you're considering is a license --
10:39:48 but to sell the whole kit and caboodle to Google for
10:39:52 $700,000.00.
10:39:53 And don't be fooled when they tell you -- and I'm
10:39:57 sure they will here in a second -- that, oh, the '049
10:40:01 patent that you're considering is different from the '756.
10:40:03 When you go into that jury room, pull open the
10:40:07 '049, look at Claim 1. There are some italicized words in
10:40:10 there. Those italicized words are words that were added to
10:40:14 the '049 that were not in the '756. Look how many there
10:40:20 are. There are very few. All the rest of that is exactly
10:40:23 the same.
10:40:24 And, as Mr. McGavock said, the '049 and the '756
10:40:28 that Dr. Li agreed to sell are exactly the same for
10:40:32 valuation purposes, exactly the same. You can look at it
10:40:36 for yourself, and you'll see 98 percent of it is exactly
10:40:39 the same.
10:40:39 So, in the end, if you reach this issue of
10:40:47 damages, the calculation based on the actual profits of
10:40:50 sales through Echo devices, the royalties should be
10:40:52 $134,000.00. And you should -- if you think it should be a

10:40:56 1 little more than that, you should always have this ceiling
10:40:58 2 of $700,000.00 because that's what we know Dr. Li had
10:41:03 3 agreed to accept for the sale of this very same technology.
10:41:08 4 And, as the Judge said, you're going to have a
10:41:11 5 question on whether or not that's a lump sum or a running
10:41:14 6 royalty. And you should check lump sum because all the
10:41:18 7 evidence in this case points to that.
10:41:20 8 Dr. Li offered to sell his patent for a lump sum.
10:41:24 9 Amazon's policy, as you heard from the witness stand, is to
10:41:28 10 only license as a lump sum. And, indeed, Amazon produced
10:41:32 11 its licenses in this case, and 11 of those 12 are lump sum.
10:41:38 12 The only exception being where they licensed this entire
10:41:43 13 giant pool of patents on a running royalty basis.
10:41:46 14 So all of the evidence leads you to conclude that
10:41:52 15 indeed this damage amount, if you reach that, should be a
10:41:56 16 lump sum.
10:41:56 17 Now, let -- let me end up here. When -- when we
10:42:02 18 started this case, and what Mr. Hadden told you is, Amazon
10:42:07 19 wouldn't be here unless they believed this case was
10:42:10 20 important to our patent system, to our jury system, and,
10:42:15 21 frankly, to our way of doing business.
10:42:20 22 And the -- the specific facts of this case are --
10:42:25 23 I'll be diplomatic -- troubling to Amazon. Because what
10:42:30 24 happens far too often in sort of the world we live in today
10:42:34 25 is that companies like Amazon, companies who had very

10:42:39 1 humble beginnings in a small garage of a house with two
10:42:43 2 computers and who have worked hard, who have hired the best
10:42:46 3 and brightest engineers and scientists in the country, who
10:42:50 4 have believed in the philosophy of putting their company
10:42:55 5 first, and who have achieved some small success, often
10:43:00 6 become a target. And often they become a target of
10:43:03 7 lawsuits. And often they become a target of lawsuits by
10:43:06 8 folks who haven't quite achieved what they wanted to in the
10:43:10 9 marketplace, and they're trying to achieve that and get
10:43:14 10 money in the courthouse. And that's not how it ought to
10:43:19 11 work.
10:43:19 12 I -- I know you remember that several times the
10:43:21 13 Plaintiffs have put up slides in the course of this
10:43:25 14 lawsuit, and the title of them has been American Dream.
10:43:30 15 THE COURT: Two minutes remaining.
10:43:31 16 MR. DACUS: Thank you, Your Honor.
10:43:32 17 And I thought to myself when I saw those slides,
10:43:35 18 the American dream ought not be filing lawsuits against
10:43:40 19 companies who have worked hard to be successful. Indeed,
10:43:44 20 that's not the American dream, nor should it be.
10:43:47 21 But, thankfully, under our Constitution, folks
10:43:52 22 like Amazon can come to the courthouse, they can defend
10:43:55 23 themselves, they can put the facts and evidence in front of
10:43:57 24 you, and they can let a jury determine whether or not this
10:44:00 25 kind of stuff ought to stop.

10:44:04 And that's why Amazon is here, because this kind
10:44:07 of stuff needs to stop, and it needs to stop here. Amazon
10:44:13 can't stop it. Only a jury can stop it. That's why we ask
10:44:17 you to help us.
10:44:19 In just a few minutes, you're going to go, retire,
10:44:23 you're going to get all these questions on the verdict form
10:44:27 from the Judge. And Amazon looks very forward to receiving
10:44:32 your verdict.
10:44:33 I want to end by saying, on behalf of the men and
10:44:36 women who work at Amazon, a very sincere thank you. And I
10:44:36 want to be clear, that "thank you" is not conditional on
10:44:41 how you answer these questions; it's not. All Amazon ever
10:44:42 wanted was an opportunity to defend itself, present the
10:44:48 facts to you, and let the chips fall where they may. And
10:44:51 they -- they would not have that opportunity without you,
10:44:54 and we're very much appreciative of it.
10:44:56 Now, these folks are going to get to stand up and
10:44:59 talk again. We're not going to get to say a word. I'm
10:45:02 going to have to depend on you. I don't know what they're
10:45:06 going to say. But I'm going to have to depend on you that
10:45:10 no matter what they say, you will go back in your mind and
10:45:13 search the evidence to determine whether or not what they
10:45:15 say in the next 10 minutes is accurate or not.
10:45:17 Thank you very much.
10:45:18 Thank you, Your Honor.

10:45:20 THE COURT: All right. Plaintiff may now present its final closing argument.

10:45:23 MR. FABRICANT: Thank you, Your Honor.

10:45:33 Members of the jury, I just want to revisit some facts for a moment, because I had a hard time believing what I just heard. We heard about 12 or 15 minutes of, the Echo devices do not have this adaptive beamforming, they don't understand why we're saying that it does, why don't they look at the source code.

10:45:54 If we could bring up Slide No. 9 in the presentation?

10:45:58 This is code which Mr. McAlexander showed you and testified about from the witness stand. This is Amazon code, AdaptiveBeamFormer code.

10:46:13 Can you please go to Slide 16 of the presentation?

10:46:18 This is the block diagram from Amazon's Echo devices that was prepared years before the lawsuit.

10:46:24 Can you please go to Slide No. 17?

10:46:28 This is the testimony of Mr. Hilmes with respect to that block diagram where he admits they practice adaptive beamforming, and yet their counsel just argued to you that it's not in the Echo devices. It's preposterous.

10:46:44 Very important. Again, credibility. This is all about credibility. We both hired experts. They came into this courtroom. They told you for their representative

clients what they wanted you to hear.

Very important, they brought in, if you remember, Mr. Hilmes brought in four months of the critical engineer's notebook from February of 2011 to June of 2011, the notebook of Mr. Chhetri who was the author of the source code.

And I asked him on the witness stand: Why didn't you bring in the rest of the notebook? Why didn't you bring in the critical months? How about bringing in the months September, October, November of 2011, the same year when Dr. Li went to Amazon.

These notes, if you look at the notebook which is in evidence, they're hundreds of pages. They're detailed to the minute. We would have had everything you needed to know, everything you needed to know in that notebook.

And I asked him: Wouldn't it have been helpful for the jury to be able to see?

I don't know.

You didn't bring it with you, though?

No, I didn't.

So you're not able to testify about it?

No, I'm not.

Mr. Hilmes, who didn't even work at the company in 2011, think about that. All he had to do was bring the notebook and say, jury, here it is. Nothing in there.

10:48:09 I suggest to you, and you can draw inferences --
10:48:12 as the Court advised you in your instructions -- you can
10:48:16 infer that because they didn't bring the notebook for the
10:48:18 critical days, including the days surrounding the meeting,
10:48:22 they said very positive things about the meeting. They
10:48:24 said this is exactly what we need, adaptive beamforming.
10:48:28 But the notes aren't here, so you can't see them.
10:48:30 We've heard so much about the Brandstein book.
10:48:32 And I think the critical part of the Brandstein book is the
10:48:36 sentence which we've put on the board. At the very end --
10:48:39 this is the conclusion of the man who brought together all
10:48:42 of these articles, the conclusion with all of these
10:48:47 chapters, that after 20 years of active research, we cannot
10:48:50 claim that microphone array processing has had the success
10:48:53 many of us had hoped for. And many will wonder when the
10:48:59 great breakthrough in microphone array processing will
10:49:04 finally come, if ever.
10:49:06 Well, ladies and gentlemen, we have the front end
10:49:08 of the device that is Echo, which has made hundreds of
10:49:12 millions of dollars, has sold 19 million units just between
10:49:16 the day the complaint was filed in 2019 and today. And our
10:49:20 patent runs until 2031. 2031. There's no dispute about
10:49:26 that.
10:49:27 And yet they put a damages expert from a very
10:49:31 fancy company in Chicago, on the witness stand, and he

10:49:34 actually told this jury that you should award 7/10ths of a
10:49:42 penny -- 7/10ths of one penny, lump sum, for that entire
10:49:48 period of time, and that they don't make any money, that
10:49:51 they lose money, and that maybe they'll make $2.00 a unit
10:49:54 over the next five years. Do you believe that? Who would
10:49:54 believe that? Who in their right minds would believe that?
10:50:00 Now, our expert looked at their own documents,
10:50:03 which said: It's not about making money on the sale of the
10:50:05 product. We're not going to make money on that $39.00
10:50:09 thing. It's like when you buy a printer, the money is not
10:50:13 in the printer. The money is in the toner cartridges that
10:50:17 you have to buy forever, forever, forever. Very expensive.
10:50:20 That's what this is about. They give you that
10:50:22 Echo. They don't care, because they know every time you
10:50:24 make a sale, they get a piece of the action. That's what
10:50:27 this is about.
10:50:28 And this man who came from China, who got his
10:50:31 Ph.D. in Rhode Island, and Dr. Zhu, who came from China
10:50:41 and got her Ph.D. at Ohio State University -- the Ohio
10:50:44 State University, these are people who made this possible
10:50:46 for Amazon. This is the lives of -- of Dr. Li, his -- his
10:50:49 lifelong accomplishment. This was the accomplishment of
10:50:52 Dr. Zhu.
10:50:54 For Amazon, this is another patent case. They're
10:50:57 a big giant company, billions of dollars. Another patent

10:51:02 case.

10:51:02 You saw how many lawyers they had in this room for
10:51:06 the last 10 days -- five days. I've never seen so many
10:51:10 lawyer representatives for a client in my 40 years of
10:51:13 practicing law.

10:51:13 And you heard the question to Prasad --
10:51:19 Mr. Prasad: Did you listen to the testimony of Jeff Bezos
10:51:23 before Congress a couple of months ago where he admitted
10:51:27 mistakes have been made with respect to meeting with small
10:51:29 companies and taking their technology? Mistakes have been
10:51:33 made.

10:51:36 And all we, the Plaintiff, are asking for is a
10:51:39 reasonable royalty. Reasonable. And you've heard the
10:51:42 evidence about what we believe is reasonable. You've heard
10:51:46 the evidence about what they believe is reasonable.

10:51:49 But let me speak for a moment about that Google
10:51:52 offer that they want you to consider as a cap on a
10:51:56 reasonable royalty.

10:51:57 Many facts are not in dispute. That was a
10:52:00 proposal on the '756 patent, and the '756 patent is a
10:52:07 different patent. And when you open it up, as Mr. Dacus
10:52:09 suggests you do, and you look, you know what added that key
10:52:12 element of putting it all on a digital signal processor.
10:52:16 That wasn't in the '756. That's critical.

10:52:21 Number one, different patent.

10:52:23 Number two, they couldn't show you the document or
10:52:25 any document that Dr. Li ever signed saying, I agree to
10:52:30 sell, here are the terms. You know why they couldn't do
10:52:35 that? Because it does not exist. Don't you think if they
10:52:39 had a contract of sale or even a proposal for a contract of
10:52:43 sale, they would have shown it to you? Of course, they
10:52:46 would have.
10:52:47 Also critical, what else didn't Amazon tell you?
10:52:50 They said the most important thing about determining
10:52:52 infringement is source code. The source code tells you
10:52:55 everything, everything.
10:52:59 Where is the source code? Why didn't they show
10:53:01 you the source code? They showed you a couple of snippets
10:53:04 and said: It's not in there.
10:53:06 It's their source code. They could have done
10:53:08 anything they wanted to to show it to you, to explain it to
10:53:12 you, to prove it to you. They did none of that.
10:53:15 So, with respect to these exhibits, I think the
10:53:23 fact they didn't bring the notebook which would have told
10:53:26 us exactly what happened during the critical time is very
10:53:29 important. I believe the statements of Mr. Brandstein are
10:53:34 critical.
10:53:34 Now, think about this in terms of a -- of a
10:53:36 child's 5th grade mathematical textbook. It has a chapter
10:53:42 on addition. It has a chapter on subtraction. It has a

10:53:42 chapter on multiplication.

10:53:48 Do you mean that someone can take that, because it
10:53:48 does teach addition and subtraction and multiplication --
10:53:52 can take that and create a mathematical formula just
10:53:54 because they know? I couldn't do it myself with addition
10:53:58 and subtraction and multiplication.

10:54:01 This is a highly, highly complex technology. And
10:54:06 not one of those articles in that book, if you -- if you
10:54:09 care to look at it, not one of them, as Dr. Stern admitted,
10:54:13 not one of them has all of the elements of the claim
10:54:15 together, not one of them.

10:54:16 And so they would suggest -- you look at
10:54:19 Chapter 10, you look at Chapter 15, you look at math and
10:54:23 division and addition and subtraction, somehow you'll
10:54:26 figure it out.

10:54:28 Let me suggest to you the following: Why in the
10:54:31 notebook with the months that they did give you is
10:54:34 Mr. Chhetri, the engineer, who's referring right in the
10:54:37 notebook to Brandstein, and he says: This is all
10:54:40 theoretical stuff. Here it is. It's all theoretical
10:54:45 stuff. And yet on the right you can see highlighted, he's
10:54:48 referring to Brandstein.

10:54:50 And then on the next slide, Mr. Chhetri, who's the
10:54:54 author of all their source code, says: I need ideas with
10:54:57 respect to adaptive beamforming. And this is in the spring

10:55:03 and summer of '11.

10:55:06 And you know what happens two months later? They
10:55:08 invite Dr. Li to come in, and they ask him to show us
10:55:14 adaptive beamforming, because Mr. Chhetri, the key author,
10:55:18 the key engineer of everything, can't figure it out.

10:55:21 So they want to say they invented it. Keep in
10:55:25 mind the date is September 24, 2010. They don't claim they
10:55:29 invented anything between September 24, 2010, prior to
10:55:33 that. They didn't show you any device that Amazon has,
10:55:37 that has ever sold that predates September 24, 2010.

10:55:41 They didn't show you any device anywhere in the
10:55:44 world that anybody sold prior to September 24, 2010. They
10:55:49 didn't show you any Amazon patent that they are saying
10:55:52 demonstrates a prior invention, prior to September 24,
10:55:57 2010.

10:55:57 Remember, you have to put yourself in the seat of
10:56:00 an individual sitting back in September of 2010. And, as
10:56:05 Mr. McAlexander said, I thought very, very nicely:
10:56:08 Dr. Stern is a Ph.D., and he's sitting in 2020, and he's
10:56:13 got the Brandstein book in his desk for the last 20 years,
10:56:17 and he's looking in hindsight about what Brandstein
10:56:21 teaches.

10:56:22 I want to speak for a moment about willfulness.
10:56:25 Just to be clear, this jury does not have to find that the
10:56:29 patent was willfully infringed to find infringement and to

10:56:32 1 award damages. That's not required. Infringement and
10:56:38 2 willful infringement are two different things.
10:56:39 3 So we ask you to find infringement by a
10:56:42 4 preponderance of the evidence, but we also ask you to find
10:56:46 5 willful infringement.
10:56:47 6 And why? It's a very important message that you
10:56:51 7 communicate to Amazon.com, that you believe not only they
10:56:56 8 infringe and that they should pay a reasonable royalty, but
10:57:00 9 that you believe their conduct was egregious and
10:57:04 10 inappropriate.
10:57:04 11 Now, why is that so? Now, you've heard all the
10:57:06 12 evidence. I laid it out all in my opening. We know that
10:57:10 13 Dr. Li was invited to come to Amazon. We know he was asked
10:57:13 14 to present the specific technologies. We know that he was
10:57:17 15 told by Wei Li. And here are the technologies he was asked
10:57:20 16 to present, adaptive beamforming, echo noise cancellation,
10:57:24 17 the very heart of the Echo devices.
10:57:26 18 We know that Wei Li wrote Dr. Li and said: My
10:57:30 19 whole team is very interested. I think the words are quite
10:57:33 20 interested. Wei Li was on the -- was on the Echo Doppler
10:57:37 21 team. There's no dispute that Dr. Li came in. There's no
10:57:40 22 dispute in writing in his presentation he told them about
10:57:44 23 his patents.
10:57:46 24 And then they don't do business. That's fine.
10:57:48 25 But they never told Dr. Li they were working on an Echo

10:57:52 device. They never told Dr. Li they were working on this
10:57:56 invention.
10:57:56 And then, of course, we know the end of the story.
10:57:59 In 2014, he goes with Dr. Zhu to the big event in New York
10:58:03 City, he sees the invention, and he writes -- he writes
10:58:06 Mr. Prasad.
10:58:06 Now, this is the other thing I think you have to
10:58:08 ask yourself about credibility. He writes Mr. Prasad.
10:58:13 Prasad gets the letter from Amazon. He can't say, oh, I
10:58:19 never got it from Dr. Li, because Dr. Li sent it to Amazon,
10:58:20 and it's confirmed in the exhibit.
10:58:22 What does Mr. Prasad say? I have no recollection
10:58:24 of this. I have no recollection of meeting him at the --
10:58:28 at the event. I have no recollection of getting the
10:58:30 letter. Oh, and, by the way, I have no recollection of
10:58:33 ever having talked to him before, even though we showed you
10:58:36 from the witness stand that he had done a co-proposal, a
10:58:41 joint proposal with Dr. Li in 2012 to the United States
10:58:46 Government together. So he doesn't remember anything. So
10:58:50 can you really believe him? That's Mr. Prasad.
10:58:54 And what do we know from the testimony in this
10:58:56 case? We know that at the time Dr. Li came to Amazon,
10:59:01 Lab126, they had a Group C. That was that Shimmer project,
10:59:08 an utter failure. And they scrambled around, and they
10:59:11 moved the engineers from C to D and B.

10:59:15 We know they had a Group B, which was the Fire
10:59:18 Phone project. An utter failure. An utter failure. They
10:59:22 closed that down.
10:59:23 C was a failure. B was a failure. They're
10:59:28 scrambling around. Now all they've got left is Echo.
10:59:31 Can you imagine the pressure that all of these
10:59:34 people must have been under? Can you imagine the pressure
10:59:34 the engineers must have been under?
10:59:35 So they started inviting in all the companies.
10:59:37 How do we do beamforming? How do we do Echo cancellation?
10:59:42 Why couldn't they figure it out from Dr. Brandstein? But
10:59:46 they couldn't.
10:59:47 So they bring Dr. Li in, and what do they get?
10:59:50 They get the biggest success they've ever had in the
10:59:53 history of the company. And they want to pay Dr. Li
10:59:57 7/10ths of one penny -- 7/10ths of one penny. You know how
11:00:05 much money Amazon's stock is worth?
11:00:07 I find it unconscionable -- these are my opinions.
11:00:10 I find it unconscionable. I find it unreasonable.
11:00:11 You heard every witness in this case say they have
11:00:14 a corporate policy. What's the corporate policy? That if
11:00:20 they invite someone in and that person says we have a
11:00:22 patent, you close your eyes.
11:00:24 Here's the testimony. On the left is Aleksandar
11:00:26 Pance. He's the guy that was at Apple, who met Dr. Li at

11:00:32 Apple, who liked it so much that when he went to Amazon a
11:00:36 year later, he invited him back again. And he says it's
11:00:39 the corporate policy -- he's the head guy now on Echo.
11:00:41 THE COURT: Five minutes remaining.
11:00:42 MR. FABRICANT: Thank you, Your Honor.
11:00:42 The head guy on Echo Alexa. And he says: It's
11:00:47 the corporate policy that we don't look at patents. Even
11:00:50 if you tell us about them, we don't look at them, we don't
11:00:54 read them, we don't do anything.
11:00:56 And when I asked Mr. Hilmes from the witness
11:00:58 stand, you agree with your boss, don't you? Yes, I do.
11:01:02 Think about this, they're inviting in these small
11:01:08 technology companies because they can't figure it out.
11:01:11 Dr. Li and others come in. They make their
11:01:13 presentations. By the way, Dr. Li under a confidentiality
11:01:18 agreement which says, we agree, we promise that if we use
11:01:22 your technology, it will only be in a business deal with
11:01:26 you. Look at Paragraph 3 of the NDA. If we use your
11:01:29 technology, it will only be in a business deal with you.
11:01:31 Well, they used it.
11:01:32 And so what I would suggest to the members of the
11:01:42 jury is that their conduct was egregious. The corporate
11:01:46 policy is outrageous. They can have that policy, but then
11:01:48 don't invite people in, take their technology, promise this
11:01:50 in a confidentiality agreement, and then kick them to the

side.

This is outrageous, willful blindness, deliberate, intentional, mean-spirited. Not the kind of thing that happens here in the Eastern District of Texas, I can tell you that. That's not how the people are here. I know that. I've spent a lot of time here.

I'd like to put one more board up.

So here's the jury form that you will receive in just a few moments. This is only my argument. You don't have to listen to me. But I'm hoping you'll reach these conclusions on your own.

Have any of the claims been infringed by Amazon? Yes, they have.

Are either of the claims invalid? Have they proved by a clear and convincing evidence -- clear and convincing, a strong conviction in your heart, have they proven that? No. No to 1. No to 8.

Have we proven by a preponderance of the evidence that Amazon willfully infringed? I think we really did, and I think you need to tell Mr. Bezos that.

And damages. We suggest a royalty, not for the next 11 years, a reasonable royalty from the time they started through today, in the amount of $1.65 a unit, based on our expert's testimony, which amounts to a total of $31 million.

11:03:25 Is that a lot of money? It is to me. I'm sure it
11:03:29 is to everybody in this courtroom, except them.
11:03:31 Thank you very much. Thank you.
11:03:33 THE COURT: All right. Ladies and gentlemen,
11:03:47 you've now heard closing arguments from counsel for both of
11:03:52 the parties.
11:03:53 I'd like to provide you with a few final
11:03:55 instructions before you begin your deliberations.
11:03:57 You must perform your duty as jurors without bias
11:04:00 or prejudice as to any party. The law does not permit you
11:04:05 to be controlled by sympathy, prejudice, or public opinion.
11:04:10 All parties expect that you will carefully and
11:04:12 impartially consider all the evidence and follow the law as
11:04:18 I have given it to you, and reach a just verdict,
11:04:21 regardless of the consequences.
11:04:23 Answer each question in the verdict form based on
11:04:27 the facts as you find them to be, follow -- following the
11:04:31 instructions that the Court has given you on the law.
11:04:35 Again, do not decide who you think should win this
11:04:37 case and answer the questions accordingly.
11:04:41 Let me remind you one more time, your answers to
11:04:45 those questions and your verdict in this case must be
11:04:47 unanimous.
11:04:48 You should consider and decide this case as a
11:04:52 dispute between persons of equal standing in the community,

11:04:56 equal worth, and holding the same or similar stations in
11:04:59 life. This is true in patent cases between corporations,
11:05:04 partnerships, individuals, and all business entities.
11:05:07 A patent owner is entitled to protect his rights
11:05:13 under the laws of the United States, and this includes
11:05:15 bringing a suit in a United States District Court alleging
11:05:18 infringement and seeking money damages.
11:05:20 The law recognizes no distinction among types of
11:05:25 parties. All corporations, partnerships, and other
11:05:30 business organizations stand equal before the law,
11:05:33 regardless of their size and regardless who owns them, and
11:05:36 they are to be treated as equals.
11:05:38 Now, when you retire to the jury room to
11:05:42 deliberate on your verdict, as I've said, you'll each have
11:05:44 a -- your own copy of this final jury instruction that I'm
11:05:48 giving you orally to have in written form.
11:05:52 If during your deliberations you desire to review
11:05:55 any of the exhibits that the Court has admitted into
11:05:59 evidence over the course of the trial, then you should
11:06:01 advise me by sending me a written note signed by your
11:06:06 foreperson and requesting specific exhibits. And you
11:06:11 should deliver that note to the Court Security Officer, who
11:06:13 will bring it to me, and I will then send those exhibits to
11:06:16 you.
11:06:17 Once you retire, you should first select your

foreperson and then conduct your deliberations.

If you recess during your deliberations, then you should follow all the instructions that the Court's given you about your conduct during the trial.

After you reach a verdict, your foreperson is to fill in your unanimous answers to the questions in the verdict form, date it, and sign it.

You are not to reveal your answers on any question until you have been discharged by me, unless I direct otherwise. And you must never disclose to anyone, not even to me, your numerical division on any question.

Any notes that you've taken over the course of the trial, ladies and gentlemen, are aids to your memory only. If your memory should differ from your notes, then you should rely on your memory and not your notes.

A juror who has not taken notes should rely on his or her own independent recollection of the evidence and should not be unduly influenced by the notes of other jurors.

Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

If during your deliberations you want to communicate with me at any time, you should give a message or a question in writing to the Court Security Officer

signed by your foreperson. The Court Security Officer will bring it to me, and I will respond as promptly as possible, either in writing or by having you brought back into the courtroom where I can address you orally.

I will always first disclose to the attorneys in the case your question or your message and my response before I respond to you.

After you have reached a verdict and I have discharged you as jurors, I want you to understand that you are not required to talk with anyone about your service in this case.

But, at that time, you will be totally free to discuss your service in this case as you may choose. It is 100 percent at that time up to you, ladies and gentlemen.

I'll now hand eight copies of these final jury instructions and one clean copy of the verdict form to the Court Security Officer to deliver to the jury in the jury room.

Ladies and gentlemen of the jury, you may now retire to the jury room and deliberate. We await your verdict.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Counsel, awaiting either a note or a question from the jury or the return of a verdict, we stand

11:09:31 in recess.

11:09:35 (Recess.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes 10/8/2020
SHELLY HOLMES, CSR, TCRR Date
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/2020